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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 368

RAY L. CHESEBRO, APPELLANT,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED SEPTEMBER 21, 1938.

PREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 368

RAY L. CHESEBRO, APPELLANT,

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& DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 12, 1938.

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[fols. 1-2] [File endorsement omitted]

[fol. 3]

IN SUPREME COURT OF CALIFORNIA

THE CITY OF LOS ANGELES, a Municipal Corporation and RAY L. CHESEBRO, In Propria Persona, Petitioners,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, BOARD OF SUPERVISORS of the County of Los Angeles, Board of Supervisors of the County of Los Angeles as the Board of Supervisors of the Los Angeles County Flood Control District, John Anson Ford, Leland M. Ford, Herbert C. Legg, Roger W. Jessup and Gordon L. McDonough, as Members of and Constituting the Board of Supervisors of the County of Los Angeles, and Ex Officio the Board of Supervisors of the Los Angeles County Flood Control District, Respondents

PETITION FOR WRIT OF MANDATE—Filed January 31, 1938

To the Chief Justice and Associate Justices of the Supreme Court of the State of California:

Come now the City of Los Angeles, a municipal corporation, and Ray L. Chesebro, in propria persona, and respectfully petition this Honorable Court for a writ of mandate directed against respondents, and, in support thereof, respectfully allege as follows, to-wit:

[fol. 4] I

That petitioner City of Los Angeles is the owner of taxable real property situated within the Los Angeles County Flood Control District and outside the corporate limits of the City of Los Angeles, and outside the exterior boundaries of the drainage districts mentioned in paragraph III of this petition; and that petitioner Ray L. Chesebro is the owner of taxable real property situated within the Los Angeles County Flood Control District and within the corporate limits of the City of Los Angeles, and outside the exterior boundaries of the drainage districts mentioned in paragraph III hereof.

II

That the respondents, John Anson Ford, Leland M. Ford, Herbert C. Legg, Roger W. Jessup and Gordon L. McDonough, are the duly qualified and acting members of the Board of Supervisors of the County of Los Angeles.

III

That Drainage Districts Nos. 1 and 3, in the County of Los Angeles, were duly organized, and now exist, under and by virtue of the provisions of the Statutes of 1903, page 354, and acts amendatory thereof; and that Drainage Districts Nos. 8, 9, 11, 17, 22, 23, 25, 26 and 29 were each duly organized, and now exist, under and by virtue of the provisions of the Drainage District Improvement Act of 1919 (Stats. 1919, page 731), and acts amendatory thereof.

[fol. 5]

IV

That on the 1st day of December, 1937, the Board of Supervisors of the County of Los Angeles, as the Board of Supervisors of the Los Angeles County Flood Control District, by resolution, a copy of which is attached hereto in Exhibit "A" and made a part hereof by reference, the same as if set forth herein in full, purported to accept, on behalf of the Los Angeles County Flood Control District, a transfer and conveyance (made by resolution adopted on the same day by said Board of Supervisors and included in Exhibit "A") to said Flood Control District of storm drain improvements, drainage improvements or drainage systems, as set forth in said Exhibit "A," and including those of the drainage districts mentioned in paragraph III of this petition; that said resolutions were adopted over the protest of petitioner City of Los Angeles, by resolution of the City Council of the City of Los Angeles adopted on the 25th day of August, 1937, attached hereto as Exhibit "B" and made a part hereof the same as if set forth in full, and that said resolution was communicated to respondents, and each of them, prior to the adoption of said resolutions attached hereto as Exhibit "A."

V

That the bond redemption and interest requirements of Drainage Districts Nos. 8, 9, 11, 17, 22, 23, 25, 26 and 29 aggregate $4,234,001.25.

[fol. 6]

VI

That the Board of Supervisors of the County of Los Angeles as the Board of Supervisors of the Los Angeles County Flood Control District, intend to levy annual special assessments against all real property situated within said Flood Control District and outside the exterior boundaries of said drainage districts, including the real property of petitioners, sufficient to meet the outstanding obligations incurred for the works and improvements described in Exhibit "A."

VII

That the levy of such special assessments described in paragraph VI will be illegal and void, in that it will be a special assessment levied against the property situated in one special assessment district to pay the debts and obligations of other special assessment districts, without regard to the accrual of benefits to the lands assessed, and will be a gift of public funds, in violation of the provisions of section 31 of article IV of the constitution of the State of California; that the levy of said special assessments will deprive petitioners of their property without due process of law and will deny to petitioners the equal protection of the laws, in violation of the provisions of article V and article XIV of the amendments to the Constitution of the United States and section 13 of article I of the Constitution of the State of California.

[fol. 7]

VIII

That petitioners have no plain, speedy or adequate remedy at law to prevent the threatened levy of said special assessments, as aforesaid, and that unless said levy is prohibited a multiplicity of suits will result, and that this petition is made to this Honorable Court in the first instance for the reason that both petitioners and respondents urge the necessity of the early settlement of the question as to the validity of the transfer and conveyance of the works and improvements of the said drainage districts to the Los Angeles County Flood Control District, as herein set forth, in order to avoid serious confusion in providing for the payment of the outstanding obligations of said drainage districts, and in determining the amount of the assessments to be levied on behalf of the Los Angeles County Flood Control District.

IX

That all of the owners of taxable real property in the Los Angeles County Flood Control District and the drainage districts mentioned in paragraph III hereof are the parties interested in this proceeding.

Wherefore, petitioners pray that this Honorable Court issue its peremptory writ of mandate commanding respond-[fol. 8] ents to levy assessments on behalf of the Los Angeles County Flood Control District upon the taxable real property within said district solely in accordance with the provisions of the Los Angeles County Flood Control Act prior to the addition thereto, by chapter 642 of the Statutes of 1937, of section 13½, and to refrain from levying on behalf of the Los Angeles County Flood Control District any assessment for the payment of the principal upon the bonds of said drainage districts referred to in paragraph III of this petition, or the indebtedness represented by interest coupons of said bonds or for the cost or expense of operating, maintaining, repairing or improving the storm drain improvements, drainage improvements or drainage systems of said drainage districts.

Ray L. Chesebro, City Attorney; William H. Neal, Assistant City Attorney; Bourke Jones, Deputy City Attorney, Attorneys for Petitioner, City of Los Angeles. Ray L. Chesebro, In Propria Persona.

[fol. 9] EXHIBIT "A" TO PETITION

Office of the Board of Supervisors of the County of Los Angeles, State of California

Wednesday, December 1, 1937.

The Board met in regular session pursuant to recess. Present: Supervisors Roger W. Jessup, Chairman presiding. H. C. Legg, Gordon L. McDonough, John Anson Ford and L. M. Ford; and L. E. Lampton, Clerk, by Mame B. Beatty, Deputy Clerk.

. . . . . .

(Minute Book 236—Page 51)

In re Storm Drain Improvements, Drainage Improvements and Drainage Systems: Resolution Authorizing Transfer and Conveyance to the Los Angeles County Flood Control District

On motion of Supervisor L. M. Ford, duly seconded by Supervisor Legg, and carried by the following vote, to-wit: Ayes, Supervisors Legg, McDonough, L. M. Ford, and Jessup; Noes, Supervisor John Anson Ford, it is ordered that the following resolution be, and the same is hereby adopted, to-wit:

Whereas, the laws of the State of California authorize and empower the Board of Supervisors to transfer and convey any and all storm drain improvements, drainage im- [fol. 10] provements and drainage systems which were constructed under the jurisdiction, control or supervision of the Board of Supervisors and which are under the jurisdiction of said Board, and those which were constructed by or for the County or any drainage district or flood control district in such county, and those constructed under the provisions of an act entitled "An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in communities in which they lie," approved March 21, 1903, as amended, and those which have been constructed pursuant to the provisions of the Drainage District Improvement Act of 1919, as amended, prior to January 1, 1937, to any flood control district in such county; and

Whereas, there have been constructed storm drain improvements, drainage improvements and drainage systems in the above enumerated classes in the County of Los Angeles; and

Whereas, there is in the County of Los Angeles a flood control district, to-wit, the Los Angeles County Flood Control District;

Now, Therefore, Be It Resolved by the Board of Supervisors of the County of Los Angeles that the following storm drain improvements, drainage improvements and drainage systems in said county are hereby transferred and conveyed to the Los Angeles County Flood Control District:

[fol. 11] 1. Benedict Canyon, Alhambra Avenue, Hooper Avenue (two units), City Terrace, West Altadena and Olive View storm drain improvements, drainage improvements

and drainage systems constructed under the jurisdiction, control or supervision of the Board of Supervisors of the County of Los Angeles, and which said storm drain improvements, drainage improvements and drainage systems are now under the jurisdiction of said Board of Supervisors or were constructed by or for the county, or a drainage district or flood control district in such county, pursuant to plans and specifications which are now on file in the office of said Board of Supervisors;

2. Drainage districts numbers 1 and 3 in said county constructed under plans and specifications on file in the office of said Board of Supervisors, pursuant to the provisions of an act, entitled "An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in communities in which they lie," approved March 21, 1903, as amended, both constructed prior to January 1, 1937;

3. Drainage districts numbers 8, 9, 11, 17, 22, 23, 25, 26 and 29 in the County of Los Angeles and constructed under plans and specifications now on file in the office of the Board of Supervisors of said county pursuant to the provisions of the Drainage District Improvement Act of 1919, [fol. 12] as amended, and all constructed prior to January 1, 1937.

Reference is hereby made to the plans, specifications, contracts and record of proceedings for the above named drainage districts now on file in the office of the Board of Supervisors of said county, and to the plans and specifications on file in the office of the County Surveyor of said county, for detailed description of the storm drain improvements, drainage improvements and drainage systems hereby conveyed and transferred.

The Board of Supervisors of said county also hereby transfers and conveys unto the Los Angeles County Flood Control District any and all easements and rights of way granted unto said County, or any drainage district or flood control district of said county, and now used for any of the above enumerated storm drain improvements, drainage improvements or drainage systems.

Any and all funds now on hand to the credit of any of the above enumerated drainage districts are hereby transferred unto the Los Angeles County Flood Control District to be retained by said District in the funds of said drainage dis-

tricts, and expended by said Flood Control District for the purposes and in the manner provided by law.

[fol. 13] From and after the date of the conveyance and transfer made hereby the said Los Angeles County Flood Control District shall thereupon be and become liable for the payment of the principal upon the bonds of any of the above enumerated improvement districts maturing subsequent to the date hereof, and for the indebtedness of said enumerated drainage improvement districts represented by interest coupons maturing subsequent to the date of this resolution, and the Board of Supervisors of said Los Angeles County Flood Control District shall levy a special tax each year upon the taxable real property in said Flood Control District sufficient to pay the principal and interest becoming due from and after the date of this resolution. Such tax shall be levied and collected on said real property at the same time and in the same manner as the general tax levied for county purposes, and when collected shall be paid into the county treasury of said County of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest on the bonds of said enumerated drainage districts, and for no other purpose; provided, however, that if there is any surplus of the proceeds of such collection such surplus shall be deposited in the County Treasury to the credit of the interest and sinking fund of such Flood Control District and used solely and exclusively for the payment of principal and interest of the bonds of such Flood Control District.

[fol. 14] From and after the date of the conveyance and transfer hereby made said Flood Control District shall thereafter do all things necessary for the proper operation, maintenance, repair and improvement of any such storm drain improvements, drainage improvements or drainage systems, and may levy a special tax upon the taxable real property in said Flood Control District sufficient to pay the cost and expense of operating, maintaining, repairing and improving the storm drain, drainage improvements or drainage systems, which said tax shall be separate and distinct from, and shall be in addition to, the taxes authorized to be levied by said Flood Control District under Section 14 of the "Los Angeles County Flood Control District Act."

In re Transfer and Conveyance by County of Los Angeles to Los Angeles County Flood Control District of Storm Drain Improvements, Drainage Improvements and Drainage Systems: Resolution of Acceptance.

On motion of Supervisor Legg, duly seconded by Supervisor L. M. Ford, and carried by the following vote, to-wit: Ayes, Supervisors Legg, McDonough, L. M. Ford and Jessup; Noes, none (Supervisor John Anson Ford being temporarily absent), it is ordered that the following resolution be, and the same is hereby adopted, to-wit:

[fol. 15] Whereas, the laws of the State of California authorize and empower the Board of Supervisors of the Los Angeles County Flood Control District to accept on behalf of said district a transfer and conveyance to said Flood Control District of storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of said District and within any of the following described classes, to-wit:

1. Those which were constructed under the jurisdiction, control or supervision of the Board of Supervisors of the County of Los Angeles, and which are under the jurisdiction of said Board;

2. Those which were constructed by or for the County of Los Angeles or any drainage district within said county or by or for the Los Angeles County Flood Control District;

3. Those constructed pursuant to the provisions of an act entitled "An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in communities in which they lie," approved March 21, 1903, as amended, and those which have been constructed pursuant to the provisions of the Drainage District Improvement Act of 1919, as amended, prior to January 1, 1937;

4. Those within any incorporated city, town or municipality of the County of Los Angeles whose legislative body [fol. 16] has transferred and conveyed such storm drain improvements, drainage improvements or drainage systems to said Flood Control District pursuant to the provisions of any act of the State of California authorizing such transfer and conveyance; and

Whereas, the Board of Supervisors of the County of Los Angeles has by resolution transferred and conveyed unto

the Los Angeles County Flood Control District certain storm drain improvements, drainage improvements and drainage systems lying within the territorial limits of the Los Angeles County Flood Control District;

Now, Therefore, Be It Resolved by the Board of Supervisors of said Los Angeles County Flood Control District that said District does hereby accept the following storm drain improvements, drainage improvements and drainage systems, to-wit:

1. Benedict Canyon, Alhambra Avenue, Hooper Avenue (two units), City Terrace, West Altadena and Olive View storm drain improvements, drainage improvements and drainage systems constructed and which are under the jurisdiction, control or supervision of the County of Los Angeles, or which were constructed by or for the County of Los Angeles or any drainage district thereof, or the Los Angeles County Flood Control District, pursuant to plans and specifications now on file in the office of the Board of Supervisors of said Los Angeles County.

[fol. 17] 2. Drainage districts numbers 1 and 3 in said county constructed under plans and specifications on file in the office of said Board of Supervisors pursuant to the provisions of an act entitled "An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in communities in which they lie," approved March 21, 1903, as amended, and which were constructed prior to January 1, 1937;

3. Drainage districts numbers 8, 9, 11, 17, 22, 23, 25, 26 and 29, in the County of Los Angeles, and constructed under plans and specifications now on file in the office of the Board of Supervisors of said county pursuant to the provisions of the Drainage District Improvement Act of 1919, as amended, which were constructed prior to January 1, 1937.

Reference is hereby made to the plans, specifications, contracts and record of proceedings for the above named drainage districts now on file in the office of the Board of Supervisors of said county, and to the plans and specifications on file in the office of the County Surveyor of said county, for detailed description of the storm drain improvements, drainage improvements and drainage systems hereby accepted.

[fol. 18] STATE OF CALIFORNIA,

County of Los Angeles, ss:

I, L. E. Lampton, County Clerk, and ex-officio Clerk of the Board of Supervisors of said County, do hereby certify that the foregoing is a full, true and correct copy of the original Minutes of the Board of Supervisors, as entered in Minute Book No. 236, pages 51 to 53, inclusive, In re Storm Drain Improvements, Drainage Improvements and Drainage Systems: Resolution Authorizing Transfer and Conveyance to the Los Angeles County Flood Control District; also In re Transfer and Conveyance by County of Los Angeles to Los Angeles County Flood Control District of Storm Drain Improvements, Drainage Improvements and Drainage Systems: Resolution of Acceptance; and that I have carefully compared the same with the original.

It Witness Whereof, I have hereunto set my hand and affixed the seal of the Board of Supervisors, this 28th day of December, 1937.

L. E. Lampton, County Clerk and ex-Officio Clerk of the Board of Supervisors of the County of Los Angeles, State of California, by Mame B. Beatty, Deputy. (Seal.)

[fol. 19] EXHIBIT "B" TO PETITION

Resolution

Whereas, Chapters 641 and 642 of the Statutes of 1927 become effective August 27th, 1937, and

Whereas, we are informed that the Board of Supervisors of the County of Los Angeles, pursuant to the authority granted by said statutes, contemplates the taking over of certain drainage districts in said County by the Los Angeles Flood Control District, and

Whereas, said drainage districts have a bonded debt of approximately five (5) million dollars and the bond interest and principal requirements of said indebtedness, if spread over the entire county, would increase the tax rate upon the property owners within the City of Los Angeles approximately four (4) cents per $100.00 assessed valuation, and

Whereas, the property owners of the City of Los Angeles have been directly assessed under the Improvement Act of

1911 in a sum exceeding fifteen (15) million dollars, the following being a list of such major projects:

Arroyo de La Brea	$682,000.00
Boyle Heights #2	183,000.00
Main Street System	2,813,000.00
Adams and Smilez	289,000.00
Boyle Heights #3	625,000.00
Slauson #2	640,000.00
[fol. 20] La Brea Avenue System	380,000.00
Verdugo and Glassell	505,000.00
Indiana and Mines	230,000.00
Laurel Canyon System	536,000.00
Sawtelle System	634,000.00
Alhambra & Valley Blvd	198,000.00
Bedford and Cashio	125,000.00
San Fernando Road	$155.00
Sacatela System—Complete	3,552,000.00
Jefferson #1, #2, and #3, #4	3,569,000.00

and

Whereas, it would be grossly unfair to the property owners of the City of Los Angeles, after having obligated themselves for storm drain improvements by direct assessment to now be called upon to pay for said drainage district improvements from which they have received no special benefit, and

Whereas, the property owners within the City of Los Angeles have paid more than 50% of the Los Angeles County Flood Control District taxes since the formation of the District, for which they have received comparatively little benefit,

Now, Therefore, Be It Resolved by the Council of the City of Los Angeles that it most strenuously oppose any action by the Board of Supervisors of the County of Los Angeles attempting to merge said drainage districts with the Flood Control District and thus force the property owners within the City of Los Angeles to assume more than 50% of the bonded debt and the maintenance charges of said drainage [fols. 21-22] districts, and

Be It Further Resolved that the City Clerk be instructed to certify to the adoption of this Resolution and transmit

a copy thereof so certified to the Board of Supervisors of said County.

Presented by: Davis.

August 25, 1937.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, Robt. Dominguez, City Clerk of the City of Los Angeles and ex-officio Clerk of the City Council of the City of Los Angeles, do hereby certify and attest the foregoing to be a full, true and correct copy of the original Resolution adopted by the City Council August 25, 1937, in the matter appertaining thereto, on file in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the City of Los Angeles, this 27th day of January, 1938.

Robt. Dominguez, City Clerk of the City of Los Angeles, by A. Manvezin, Deputy. (Seal.)

[fols. 23-24] *Duly sworn to by Ray L. Chesebro and Robt. Dominguez. Jurats omitted in printing.*

[fol. 25] POINTS AND AUTHORITIES IN SUPPORT OF PETITION

Gist of Petition

The purpose of this petition is to secure a determination of the question of the invalidity of section 13½ of the Los Angeles County Flood Control District Act (Chap. 642 of Stats. 1937), which purports to authorize the Board of Supervisors to accept a transfer "of all, but not less than all," of certain classes of storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of the Los Angeles County Flood Control District. In substance, the petition alleges that the Board of Supervisors has by resolution accepted the conveyance of certain drainage district improvements under the purported authority of the 1937 amendment adding section 13½ to the Flood Control Act, and that they intend to meet the outstanding obligations of such drainage districts and maintain the said works and improvements by levying special assessments upon the taxable real property situated

throughout the entire Flood Control District, which includes lands outside the boundaries of the respective drainage districts.

[fol. 26]

I

The Los Angeles County Flood Control District is a special assessment district and assessments levied on behalf of said district are special assessments.

Los Angeles County Flood Control Dist. v. Hamilton, 177 Cal. 119.

II

The cost of the improvements of a special assessment district may not be imposed upon the lands of another larger special assessment district embracing the territory of the smaller district where no special benefits accrue to the lands of the larger district.

Reclamation Dist v. Birks, 159 Cal. 233;
Barber v. Galloway, 195 Cal. 1.

See, also:

City of Redwood City v. Myers, 7 Cal. (2d) 283.

III

No property can be subjected to the burden of a special assessment except property which is specially benefited by the local improvement for which the assessment is levied.

Atchison, Topeka and Santa Fe Ry. Co. v. Reclamation District No. 404, 173 Cal. 91, 93.

[fol. 27]

IV

No legislative finding has been made that the lands within the flood control district are specially benefited by the works of the drainage districts sought to be transferred to the flood control district, as was made in Palo Verde Irr. Dist. v. Seeley, 198 Cal. 477.

V

The levy of a special assessment without a finding of benefit to the lands assessed or an opportunity to property owners to be heard is lacking in due process.

Fallbrook Irr. Dist. v. Bradley, 164 U. S. 112, 41 L. Ed. 369.

VI

Lands not included within a special assessment district are not presumed to be benefited by an improvement by the district unless a legislative declaration to the contrary is expressed.

Palo Verde Irr. Dist. v. Seeley, 198 Cal. 477;
Board of Directors v. Dunbar, 107 Ark. 285, 155 S. W. 96.

(A) Under the Drainage District Improvement Act of 1919 the county surveyor is directed to include all lands which will be benefited by the improvement. Since official [fols. 28-32] duty is presumed to have been regularly performed (C. C. P. 1963, Subd. 15), presumably lands not included within the district are not benefited by the improvement contemplated.

VII

The Statutes of 1937, page 1763, do not provide for a transfer of the obligations of drainage districts to the county but to another special assessment district, nor is there any legislative finding as to the necessity for such transfer nor as to the purpose for which it is purported to be authorized. Thus, the case at bar is distinguished from the issues presented in County of San Diego v. Hammond, 6 Cal. (2) 709, and County of Los Angeles v. Jones, 6 Cal. (2d) 695.

VIII

A writ of mandate will lie for the relief as prayed for in the foregoing petition.

Felt v. Waughop, 193 Cal. 498.

[fols. 33-36] [File endorsement omitted]

[fol. 37] In Supreme Court of California

[Title omitted]

Demurrer of Respondents—Filed February 28, 1938

Come now the respondents in the above entitled action and make return to the petition herein by demurrer on the following grounds, to-wit:

[fols. 38-44] I

That the petition does not state facts sufficient to constitute a cause of action upon which this Court can legally issue the writ sought by the petition.

Wherefore, the respondents pray that the petition be denied and the return not issued.

Everett W. Mattoon, County Counsel, and J. H. O'Connor, Ass't County Counsel, and H. W. Kennedy, Deputy County Counsel, and W. B. McKesson, Deputy County Counsel, Attorneys for Respondents.

[fol. 45] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER OF SUBMISSION—Filed March 14, 1938

By the COURT:

The time for filing briefs pursuant to an order entered herein March 3, 1938, having expired, matter (mandate) submitted as of this date.

Dated March 14, 1938.

(Signed) Waste, Chief Justice.

[fol. 46] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER DENYING PETITION FOR REHEARING

By the COURT:

The Petition for a rehearing herein is denied.

Dated July 8, 1938.

(Signed) Waste, Chief Justice.

[fol. 47] [File endorsement omitted]

[fol. 48] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed August 5, 1938

Considering themselves aggrieved by the final decision of the Supreme Court of the State of California, in the above-entitled cause, the petitioners therein, the City of Los Angeles, a municipal corporation, and Ray L. Chesebro, [fol. 49] hereby pray that an appeal be allowed to the Supreme Court of the United States, herein, and for an order fixing the amount of the bond thereon.

Summary Statement of the Case

The validity of a statute of the State of California, to wit, Statutes of 1937, page 1763, adding section 13½ to the Los Angeles County Flood Control District Act, Statutes of 1915, page 1502, is drawn into question upon the ground that said statute deprives appellants, and each of them, of their property without due process of law and denies to each of them the equal protection of the laws, in violation of the provisions of article V and article XIV of the Amendments to the Constitution of the United States, in that:

Said statute, adding section 13½ to the Los Angeles County Flood Control District Act, authorizes the Board of Supervisors of the Flood Control District, which is a special assessment district, to transfer to the Flood Control District, at their discretion, all, but not less than all, storm drain and drainage works and improvements, including the drainage works of drainage districts situated within the territorial limits of the Flood Control District, and to assume the outstanding obligations incurred in constructing such works and improvements without regard to the question of benefits to [fol. 50] the lands which will be assessed for the payment of such obligations, for the reason that no provision is made for giving the owners of taxable real property within the Flood Control District an opportunity to be heard on such questions or on the amount of the assessments.

The Supreme Court of the State of California is the court of last resort in this case, and on June 9, 1938, it ren-

dered a judgment in said case. Appellants filed a petition for rehearing before said court within the time allowed by the rules of said court, to wit, on June 27, 1938, and the same was denied on July 8, 1938, and the judgment became final on July 10, 1938. The judgment rendered, as aforesaid, finally disposed of all the issues in the case by discharging the alternative writ of mandate directing that the respondents cause to be levied assessments only in accordance with the provisions of the Los Angeles County Flood Control District Act as it existed prior to its amendment in 1937 by the statute whose validity is here questioned.

The opinion of the Supreme Court of California has not as yet been officially reported but is unofficially reported in City of Los Angeles, et al. v. Los Angeles County Flood Control District, et al., 80 Pac. (2d) 479, 95 California Decisions 525.

[fol. 51] Assignment of Errors

The appellants assign the following errors in the record and proceedings in said case:

I

The Supreme Court of the State of California erred in holding that the rights of appellants secured and protected by the provisions of section 1 of article XIV of the Amendments to the Constitution of the United States were not violated by a statute which authorizes the managing board of a special assessment district (Los Angeles County Flood Control District) created by the legislature to exercise discretionary power and accept a transfer of the works and assume the obligations of other special assessment districts (drainage districts) subsequently created by the County Board of Supervisors upon petition of landowners within such other special assessment districts (drainage districts) without requiring that the owners of taxable real property within the special assessment district (Los Angeles County Flood Control District) proposing to accept the transfer be given an opportunity to be heard on the question of whether such transfer and assumption of obligation will be of benefit to the taxable real property of the district.

II

The Supreme Court of the State of California erred in holding that by designating the classes of structures which

might be transferred to the Los Angeles County Flood Con-
[fol. 52] trol District at the discretion of the Board of Supervisors of Los Angeles County (the managing board of the Los Angeles County Flood Control District) it is to be presumed that the legislature concluded that the Los Angeles County Flood Control District would be benefited by the structures of such classes if and when they should be acquired on behalf of the Flood Control District.

III

The Supreme Court of the State of California erred in holding that section 13½ of the Los Angeles County Flood Control District Act (Stats. of 1937, p. 1763) refers to specific classes of structures, the nature of which indicates their relative usefulness for the purposes of the Flood Control District without the necessity of any express declaration to such effect.

Prayer for Reversal

For which errors appellants pray that the said judgment of the Supreme Court of the State of California, dated June 9, 1938, in the above-entitled cause, be reversed, and a judgment rendered in favor of appellants, and for costs.

[fols. 53-81] Ray L. Chesebro, City Attorney; Frederick von Schrader, Assistant City Attorney; William H. Neal, Assistant City Attorney; Bourke Jones, Deputy City Attorney, by Frederick von Schrader, Assistant City Attorney, Counsel for Appellant City of Los Angeles. Frederick von Schrader, William H. Neal, Bourke Jones, by Frederick von Schrader, Counsel for Appellant Ray L. Chesebro.

[fol. 82] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

In Bank

S. F. No. 15990

THE CITY OF LOS ANGELES, a Municipal Corporation, et al., Petitioners,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT et al., Respondents

OPINION—Filed June 9, 1938

This proceeding in mandamus presents the question of the constitutionality of section 13½ of the Los Angeles County Flood Control District Act added to the statute in 1937 (Stats. 1937, p. 1763). The original statute is found in the statutes of 1915 at page 1502.

The petitioners alleged their ownership of lands situated and assessable within the Los Angeles County Flood Control District but outside the confines of certain named drainage districts within the flood control district. The petition shows that in December, 1937, the board of supervisors of Los Angeles county, acting as the board of supervisors of the flood control district, by resolution, accepted a transfer to the flood control district of the storm drain improvements, drainage improvements and drainage systems of drainage districts numbers 1 and 3, organized under the statute of 1903 (Stats. 1903, p. 354), and of drainage districts numbers 8, 9, 11, 17, 22, 23, 25, 26 and 29, organized under the [fol. 83] Drainage District Improvement Act of 1919 (Stats. 1919, p. 731), and amendatory acts. All of said drainage districts and drainage district improvements are located within the territory comprising the Los Angeles County Flood Control District. In the course of the proceedings accepting the transfer the board did not expressly make a finding of the necessity or usefulness of such property for any of the purposes of the flood control district, nor was any hearing ordered or had on the question of such usefulness or necessity. The terms of the Conveyance and acceptance provided for the transfer to the flood control district of funds on hand in the several drainage districts and for the assump-

tion by the flood control district of the obligation to pay the principal and interest remaining unpaid on all outstanding bonds, issued by such districts to cover the cost of the improvements conveyed, maturing subsequent to the date of the conveyance or transfer. The petition discloses an intent on the part of the board of supervisors to proceed pursuant to the power vested in it by said section 13½.

It is alleged that the bond redemption and interest requirements of drainage districts numbers 8, 9, 11, 17, 22, 23, 25, 26, and 29 aggregate $4,234,001.25; but what proportion, if not all, of this amount represents obligations maturing subsequent to the date of transfer is not indicated. It is stated [fol. 84] that the board of supervisors intends to levy annual special assessments upon all the real property within the flood control district sufficient to meet the outstanding obligations incurred for the drainage improvements accepted by the board. It is alleged and claimed by the petitioners that such special levy on lands within the flood control district but outside of the drainage districts whose obligations would be affected thereby is illegal and void because, so it is urged, it would be a special assessment levied against property without regard to the accrual of benefits to the lands assessed, and therefore would be a denial of due process and the equal protection of the laws enjoined by the state and federal Constitutions. The petitioners seek to employ the remedy here invoked to restrain the assessment contemplated by the board on lands outside the drainage districts. The alternative writ issued.

Questions of law only are involved. They are presented by a demurrer interposed on behalf of the respondents.

By section 13 of article XI of the state Constitution the legislature is given power "to provide for the supervision, regulation and conduct, in such manner as it may determine, of the affairs of irrigation districts, reclamation districts or drainage districts organized or existing under any law of this state". (Amendment adopted Nov. 3, 1914.)

[fol. 85] The objects and purposes of the Los Angeles Flood Control District Act were stated in section 2 to be: "to provide for the control of the flood and storm waters of said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district, or to save or conserve in any manner, all or any of such waters, and to protect from damage from such flood or

storm waters the harbors, waterways, public highways and property in said district". By section 16 the board of supervisors was given the power to do all work and to construct and acquire all improvements necessary or useful for carrying out any of the purposes of the act; also to acquire either within or without the boundaries of the district, by purchase, condemnation, donation or by other lawful means, from private persons, corporations, reclamation districts, swamp land districts, levee districts, protection districts, drainage districts, irrigation districts, or other public corporations, or agencies, or districts, all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes of the act, and to compensate any private owner or reclamation or other district or agency for property taken over or acquired by the flood control district as a part of its work of control or conservation or protection.

Section 13½ added by Statutes of 1937 provides that the [fol. 86] board of supervisors of the Los Angeles County Flood Control District, by a four-fifths vote may accept a transfer and conveyance of all, but not less than all, storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of the flood control district and within certain described classes, including those constructed prior to January 1, 1937, pursuant to provisions of the 1903 and 1919 acts hereinabove mentioned. Said section 13½ also contained the following provisions: "Upon the transfer or conveyance to said flood control district of any such storm drain improvements, drainage improvements or drainage systems, to pay the cost and expense of the construction of which bonds of any drainage improvement district have been issued, said flood control district shall thereupon be and become liable for the payment of the principal upon the bonds of such drainage improvement district maturing subsequent to the date of such conveyance and upon the indebtedness of such drainage improvement district represented by interest coupons maturing subsequent to such date of transfer. The board of supervisors of the flood control district shall levy a special tax each year upon the taxable real property in said flood control district sufficient to pay the principal and interest on the bonds of said drainage districts as such principal and interest become due subsequent to the date of such conveyance and transfer. Such tax shall be levied

[fol. 87] and collected on said real property at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said county of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest on said drainage district bonds and for no other purpose."

It will be noted that neither section 16 nor section 13½ provides for a rehearing prior to acquisition of any of the property described therein, and that section 16 alone expressly restricts the acquisition of property to that which is necessary or useful for the purposes of the district. It will also be noted, however, that section 16 does not refer to specific property, such as is described in section 13½. In other words, section 16 provides generally for the acquisition of such property as, in the opinion of the board of supervisors, may be necessary or useful to carry out the purposes of the flood control act. Section 13½, on the other hand, refers to the acceptance of a limited class of described property, namely, the specified storm drain improvements, drainage improvements, and drainage systems, which from the nature of such property indicates without any express declaration its relative usefulness for the purposes of the flood control district.

The petitioners contend that inasmuch as the legislature in enacting section 13½ did not expressly find that drainage [fol. 88] improvements constructed within the Los Angeles County Flood Control District are beneficial or useful to the lands in the district, and did not provide the means for a hearing and a finding in that respect by a designated body, an assessment levied on lands within the flood control district and outside the drainage districts to meet any part of the cost of such improvements constitutes a deprivation of due process of law. The contention, however, is necessarily grounded on the hypothesis that the drainage improvements are not per se useful for the purposes of the flood control district and therefore not beneficial to all the lands within that district, and that the absence of any legislative declaration of such benefit, or any provision for a hearing on the question of benefit to the lands affected, is fatal to the validity of the section.

To support their theory the petitioners argue that when the drainage districts were formed, especially the districts organized subsequent to the creation of the flood control

district, they presumably included all of the territory which would be benefited by the respective drainage improvements, and that the omission from the districts of any surrounding area conclusively indicates that such area would not be benefited thereby. The petitioners rely generally on cases which hold that only the lands benefited may be assessed to pay the cost of such special improvements (Spring [fol. 89] St. Co. v. City of Los Angeles, 170 Cal. 24; A. T. and S. F. Railway Co. v. Reclamation Dist. No. 404, 173 Cal. 91), and on cases holding that to permit assessments for special improvements without a legislative declaration of benefit to the lands assessed or a provision for a hearing and finding by a properly constituted body, is to deprive the owner of due process in violation of the state and federal Constitutions. (Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 112; Miller & Lux v. Board of Supervisors, 189 Cal. 254.)

Nevertheless the petitioners correctly concede that if the legislature itself has found, either by designating the territory to comprise the district or by expressly so declaring, that the lands included or affected are benefited, such a finding presupposes appropriate and adequate inquiry and is conclusive upon the property owners in the district and upon the courts (Fallbrook Irrigation Dist. v. Bradley, supra; People v. Sacramento Drainage Dist., 155 Cal. 373, 386; Brookes v. City of Oakland, 160 Cal. 423; Miller & Lux v. Board of Supervisors, supra); and in such case it is not essential that the benefits be realized in fact, if otherwise there is any reasonable foundation for the finding of potential benefit. (Board of Directors of Crawford County Levee Dist. v. Dunbar, 107 Ark. 285, 155 S. W. 96.)

The petitioners point to the inclusion in section 16 of [fol. 90] language specifying that lands or improvements within or without the district to be acquired pursuant to the authority of that section, must be such as will be necessary or useful for carrying out the purposes of the act, and to the absence of any such qualifying language in section 13½, as indicative of the invalidity of the latter section. The petitioners, however, have not fully appreciated the necessity for the inclusion of such qualifying language in section 16 and the reason for its omission from section 13½. As noted, section 16 confers the general power upon the board of supervisors to acquire such lands or works, wherever they may be situate, as may be necessary or useful for the pur-

poses of the act. In contrast to that, by section 13½ the legislature itself has specified particular property which may be acquired by the flood control district. Flood control necessarily covers a much larger field and a broader program than one restricted merely to drainage of a specified area. It conceivably includes works or improvements which may be far removed from the lands which will be protected and benefited thereby. It is therefore within the legislative discretion to conclude that a system of drainage improvements, although initially employed to the direct beneficial use of a restricted area for drainage purposes, may be employed in conjunction with flood control facilities for the benefit of a much larger area. By designating in section 13½ the particular property which may be acquired [fol. 91] by the flood control district it must be presumed that the legislature concluded that the entire flood control district would be so benefited by the use of the designated drainage improvements in the larger and broader program of the flood control act.

The petitioners do not question the propriety of a legislative finding that the designated improvements would be so beneficial. They complain of the absence of an express declaration in that regard. But from the import of section 13½ the legislature must be deemed to have exercised its plenary power to make such a finding. That section is not construed as granting a general power to the board of supervisors to acquire properties for the use of the district. It is rather a special declaration that it may acquire on behalf of the flood control district certain designated properties, namely, drainage works and improvements and systems constructed prior to January 1, 1937, by certain classes of drainage districts within the flood control district. This particularity of description of the improvements and property authorized to be accepted by the district presupposes a prior inquiry and investigation on the part of the legislature and a finding by it that such designated improvements will be useful for the purposes of the district and beneficial to the territory comprising the flood control district. It is obvious therefore that section 16 and 13½ have no necessary re- [fol. 92] lation to each other. Nor is section 13½ inconsistent with section 4 of the act, which requires the board of supervisors to employ engineers to formulate the best plan for carrying out the purposes of the act. In the matter of the acquisition of the property described in section 13½

the legislature has itself decided the usefulness of the property to the purposes of the flood control district. Section 13½, together with the enactment of a general statute on the same subject (Stats. 1937, p. 1761), evidences the adoption by the legislature of a comprehensive program of drainage and flood control in the various counties to be carried out by flood control districts, rather than divided among counties, drainage districts and flood control districts.

The Constitution and the decisions do not preclude the carrying out of that program by the enactment of the legislation referred to. As pointed out in Hadley v. Dague, 130 Cal. 207, 220, the mode in which the expense is to be borne as well as the district which is to bear the expense and the manner of distributing the expense are legislative questions. It was there held that although the theory upon which the expense is charged to the land in the district is that the property has received a particular benefit, nevertheless the validity of the assessment does not depend upon the ability to show that the property received a benefit commensurate with the amount of the assessment, that is, that the benefit [fol. 93] is identical with the burden. And quoting from Fallbrook Irrigation District v. Bradley, supra, the court recognized that although the method of arriving at the amount of the burden may in some instances result in inequalities, that circumstance was "far from arising to the level of a constitutional problem, and far from the case of taking property without due process of law". The Hadley case referred to the case of Lent v. Tillson, 72 Cal. 428, and the statement therein that the benefits need not be immediate, but that the only just limitation, if any existed, with respect to assessing for such benefits, was that "a tax will not be upheld when the courts can plainly see that the legislature has not really exercised its judgment at all, or that manifestly and certainly no such benefit can or could reasonably have been expected to result. The judge should not place his mere opinion against that of the legislature."

The following language from the case of Los Angeles County Flood Control District v. Hamilton, 177 Cal. 119, 124-125, might well be held applicable in disposing of the petitioners' contention herein: "The mere passage of the act, then, must be taken to import a finding by the legislature that the proposed work will answer a public purpose and that its execution will benefit the land within the district

to such an extent as to warrant the imposition upon such land of the cost in the manner provided. The findings thus implied are as fully effective as if declared in express terms [fol. 94] in the act itself. (San Christina Inv. Co. v. San Francisco, 167 Cal. 762, 769.) The fixing of the district which is to bear the expense of a local improvement and the mode in which such expense is to be borne and distributed are primarily legislative questions." It has long been settled that adjustments in such matters which are within the legislative discretion may be made subsequent to the organization of such corporate bodies and districts. (Johnson v. City of San Diego, 109 Cal. 468; Palo Verde Irr. Dist. v. Seeley, 198 Cal. 477.)

The legislature has been invested with an enlarged discretion by section 13 of article XI of the Constitution. Cogent reasons must therefore appear in support of objections urged against particular statutory provisions relating to the conduct of such districts enacted subsequent to the adoption of the constitutional amendment before the court would be justified in declaring them invalid. (Wores v. Imperial Irrigation Dist., 193 Cal. 609, 622.)

Our conclusions herein are not opposed to the holding in the case of Reclamation District v. Birks, 159 Cal. 233, relied upon by the petitioners. The present case does not involve a "sale" of improvements from one district to another as was contemplated by the action of the trustees of the reclamation district in the cited case. It was held in the Birks case that one district may not acquire property [fol. 95] of another and impose upon the property owners payment of the debts of the one from which the property has been acquired unless the land so burdened will derive a commensurate benefit therefrom. The result in that case has been obviated here by the action of the legislature declaring in effect that the lands so to be burdened have been or will be benefited by the transfer of the specified property. The same distinction supported the validity of an act which authorized the transfer of properties from a smaller to a larger district in the case of Barber v. Galloway, 195 Cal. 1. The case of City of Redwood City v. Myers, 7 Cal. (2d) 283, does not support the petitioners' position. That case involved the validity of the Municipal Investment Bond Act (Stats. 1915, p. 109), which purported to permit the municipality to levy an assessment for the purpose of issuing bonds the proceeds of which were to be used for purchasing

and retiring improvement bonds of the city or its improvement districts. In line with the case of Reclamation District v. Birks, supra, it was held that the legislature was without the power to authorize the imposition of a tax upon all the lands in the municipality for the purpose of retiring a bond issue, the proceeds of which were to be used for purchase of such bonds; that the permanent purchase of bonds merely to effect their retirement and as a relief measure was not a beneficial use of the proceeds of the bond issue within the [fol. 96] holding of the Birks case.

Our conclusion herein that the statute involved is valid also finds support in Palo Verde Irrigation District v. Seeley, supra. In that case the writ of mandate directed the respondent to sign refunding bonds pursuant to the Palo Verde Irrigation District Act (Stats. 1923, p. 1067.) That act provided for the organization of the Palo Verde Irrigation District which comprised and joined the territory and functions of three former independent agencies, a levee district, a drainage district, and a mutual water company. The legislature expressly declared that all of the improvements of each former district were uniformly advantageous and beneficial to all the lands of the new district. The refunding bonds were issued pursuant to an amendment of 1925 (Stats. 1925, p. 637), for the purpose of redeeming the bonds of all three districts. The power of the legislature to authorize the imposition of the obligation upon the larger district to pay for improvements constructed within the smaller districts was upheld. The respondents there contended that in fixing the boundaries of the smaller district it must have been determined that the lands included therein only and no others were benefited by the works there constructed. But the contention was considered unavailing. The court said: "It may well happen that by the extension of the original plans lands which would not be benefited by the original construction work would derive a benefit not [fol. 97] only from the additional improvement but from the original improvement as well." It is true that in that case the legislative declaration of benefit was express, but it is seen that the same effect should obtain where, as here, from the nature of the enactment, the implication that the legislature so found is unmistakable and unavoidable.

The statement in the case of Van de Water v. Pridham, 33 Cal. App. 252, 261, that there is a radical difference between the purposes of the Drainage Act and the Flood

Control Act, the purpose of the former being to dispose of the water as an injurious element and of the latter to conserve it as a beneficial agent, is not necessarily inconsistent with the conclusions herein expressed. It is not difficult to perceive that the object to be attained by the legislation here questioned, namely, the combination of the functions of drainage and flood control to the end that drainage waters may as well be conserved through the joint facilities of the drainage and flood control districts, is well within the legislative power.

The peremptory writ is denied and the alternative writ is discharged.

Shenk, J.

We concur: Langdon, J. Curtis, J. Waste, C. J. Seawell, J.

[fols. 98-99] Bond on appeal for $300.00, approved and filed August 5, 1938, omitted in printing.

[fol. 100] [File endorsement omitted]

[fol. 101] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 5, 1938

The appellants in the above-entitled suit, and each of them, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above-entitled suit by [fols. 102-103] the Supreme Court of the State of California on the 9th day of June, 1938, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided:

It is Now Here Ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of California in the above-entitled cause, as provided by law, and it is Further

Ordered that the Clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said court within sixty days of this date, and it is Further Ordered that security for costs on appeal be fixed in the sum of $300.00.

Dated this 3rd day of August, 1938.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fols. 104-112] Citation, in usual form, showing service on J. H. O'Connor, filed August 5, 1938, omitted in printing.

[fol. 113] [File endorsement omitted]

[fol. 113½] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION INDICATING PORTIONS OF RECORD TO BE INCORPORATED INTO THE TRANSCRIPT—Filed August 5, 1938

It is Hereby Stipulated, by and between the parties in the above-entitled cause through their counsel, that the following portions of the record be included in the transcript of the record in the above-entitled cause to be transmitted to the Supreme Court of the United States:

[fol. 114] 1. The Petition for Writ of Mandate;
2. The Demurrer to said Petition;
3. The Order of Submission of the Cause;
4. The Decision of the Supreme Court of California;
5. The Order Denying the Petition for Rehearing;
6. The Petition for the Allowance of an Appeal; together with Assignment of Errors and Prayer for Reversal;
7. The Statement As to Jurisdiction;
8. Cost Bond on Appeal;
9. The Order of the Chief Justice of the Supreme Court of California Allowing the Appeal to the United States Supreme Court;
10. The Citation to Appellees;

11. Service of Appeal Papers upon Appellees;
12. This Stipulation Indicating the Portions of the Record to be Included in the Transcript.

Dated this 5th day of August, 1938.

Ray L. Chesebro, City Attorney; Frederick von Schrader, Assistant City Attorney; William H. Neal, Assistant City Attorney; Bourke Jones, Deputy City Attorney, by Frederick von Schrader, Assistant City Attorney, Counsel for Appellant [fols. 115-130] City of Los Angeles. Frederick von Schrader, William H. Neal, Bourke Jones, by Frederick von Schrader, Counsel for Appellant Ray L. Chesebro. J. H. O'Connor, County Counsel, by Wm. B. McKesson and H. W. Kennedy, Deputies County Counsel, Counsel for Appellees.

[fols. 131-132] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 133] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed September 21, 1938

Come Now the appellants in the above-entitled cause, and state that the points upon which they intend to rely in this court in this case are as follows:

[fol. 134] Point I

The Supreme Court of the State of California erred in holding that the rights of appellants secured and protected by the provisions of section 1 of article XIV of the Amendments to the Constitution of the United States were not violated by a statute which authorizes the managing board of a special assessment district (Los Angeles County Flood Control District, theretofore created by the legislature) to exercise discretionary power and accept a transfer of the works and assume the obligations of other special assessment districts (drainage districts subsequently created by the County Board of Supervisors upon petition of land-

owners therein) without requiring that the owners of taxable real property within the special assessment district (Los Angeles County Flood Control District) proposing to accept the transfer be given an opportunity to be heard on the question of whether such transfer and assumption of obligation will be of benefit to the taxable real property of the district.

Point II

The Supreme Court of the State of California erred in holding that by designating the classes of structures which might be transferred to the Los Angeles County Flood Control District at the discretion of the Board of Supervisors of Los Angeles County it is to be presumed that the legislature concluded that the Los Angeles County Flood Control [fol. 135] District would be benefited by the structures of such classes if and when they should be acquired on behalf of the Flood Control District.

Point III

The Supreme Court of the State of California erred in holding that section 13½ of the Los Angeles County Flood Control District Act refers to specific classes of structures, the nature of which indicates their relative usefulness for the purposes of the Flood Control District without the necessity of any express declaration to such effect.

Point IV

The Statute of the State of California, to wit, Statutes of 1937, page 1763, entitled, "An act to amend the 'Los Angeles County Flood Control Act,' by adding thereto a new section, to be numbered 13½, relating to the conveyance and transfer to such district of storm drain improvements, drainage improvements and drainage systems, for the assumption of liability for the payment of bonds of drainage districts issued for the construction of storm drain improvements, drainage improvements and drainage systems so conveyed and transferred, for the operation, maintenance, repair and improvement of such storm drain improvements, drainage improvements and drainage systems and the levy of a special tax therefor," approved June 29, 1937, [fol. 136] is unconstitutional and repugnant to section 1 of the Fourteenth Amendment to the Constitution of the

United States, in that it deprives appellants of their property without due process of law.

And appellants represent that the whole of the record as filed is necessary for the consideration of the case.

Dated this 8th day of September, 1938.

Ray L. Chesebro, City Attorney; Frederick von Schrader, Assistant City Attorney; William H. Neal, Assistant City Attorney; Bourke Jones, Deputy City Attorney, by Frederick von Schrader, Assistant City Attorney, Counsel for Appellant, City of Los Angeles. Frederick von Schrader, [fol. 137] William H. Neal, Bourke Jones, by Frederick von Schrader, Counsel for Appellant, Ray L. Chesebro.

Due and timely service of the above Statement of Points to be Relied Upon and Designation to Print Entire Record is hereby acknowledged this 8th day of September, 1938.

J. H. O'Connor, County Counsel; H. W. Kennedy, Deputy County Counsel; W. B. McKesson, Deputy County Counsel, by J. H. O'Connor, Counsel for Appellees.

[fol. 138] [File endorsement omitted.]

Endorsed on cover: File No. 42,853. California Supreme Court. Term No. 368. The City of Los Angeles and Ray L. Chesebro, appellants vs. Los Angeles County Flood Control District, et al. Filed September 21, 1938. Term No. 368, O. T., 1938.

> "It is not contended—nor could it well be—that any private right of the city was infringed, but only that a power to regulate in the public interest, theretofore confided to it, was taken away and lodged in another agency of the state,—one created by the state Constitution. Thus the whole controversy is as to which of two existing agencies or arms of the state government is authorized for the time being to exercise in the public interest a particular power, obviously governmental, subject to which the franchise confessedly was granted. In this no question under the contract clause of the Constitution of the United States is involved, but only a question of local law, the decision of which by the supreme court of the state is final."

This court was at pains to point out in the case that the right conferred on the City of Pawhuska was founded in legislation rather than contract. It is therefore apparent that the question there presented was one of local law alone. However, that decision does not apply to the case at bar for the reason that the right contended for by the appellant City of Los Angeles is recognized by the Supreme Court of California but the statute is held not to be in violation of that right. As was stated by Mr. Justice McKenna, in *General Oil Company v. Crain* (1908), 209 U. S. 211, after reviewing numerous decisions (p. 228):

> "It being, then, the right of a party to be protected against a law which violates a constitutional right, whether by its terms or the manner of its enforcement, it is manifest that a decision which denies such protection gives effect to the law, and the decision is reviewable by this court."

It is therefore apparent that the question of the statute being in violation of the recognized constitutional rights of appellant City of Los Angeles is not a question of local law but one over which this Honorable Court will take jurisdiction.

The rule adopted in California is not the result of caprice or unsound reasoning on the part of the courts of that state. It must be remembered that most of the principal cities of California were created under the laws of Spain and Mexico, some of the older cities having been founded prior to the formation of the Union itself. Nor were their private or corporate rights destroyed upon the acquisition of California by the United States. The background of the rights of municipalities in California is indicated by the following excerpts taken from the article on Municipal Corporations in 18 California Jurisprudence, pages 693, 694, 1040 and 1041:

> "In California the municipal corporation has a predecessor in the pueblo or town which existed under the Mexican regime. Pueblos were ordinarily formed by the union of families or settlers, or by the conversion of presidios or forts, and when once established and officially and legally recognized as such, unless governed by special acts, they came immediately within the provisions of the general laws relating to pueblos. They were entitled to certain political, municipal and property rights and privileges, and were presided over by municipal officers known as alcaldes. This municipal organization continued until the military occupation of California by the United States in 1846, and even afterwards for a certain period the pueblos were continued in existence, being presided over by American alcaldes. Except to the extent to which vested property rights were concerned, however, the Mexican system of municipal

government has had slight influence upon that provided for under the California government. * * *

"Before the military occupation of California by the army of the United States, the Mexican pueblos, or municipal corporations, were invested with title to the lands within their boundaries. * * * The pueblos retained, during the war between the United States and Mexico, all their rights to municipal lands which had been conferred upon them previously, and a grant by an alcalde of such lands, whether Mexican or American, while the war continued, was valid. * * *

"The occupation and subsequent acquisition of California by the United States did not suspend or determine any rights or interest of the pueblos or of the municipalities succeeding the pueblos, in the pueblo lands. And if any interest passed to the government of the United States by the acquisition, it was reconveyed by the act of congress of March 3, 1851, entitled, 'An Act to Ascertain and Settle the Private Land Claims of California.' This act, while granting certain of the lands within the boundaries of the pueblos and their successors in trust for the benefit of bona fide holders under their grants, also operated as a grant to the pueblos of all lands within their limits, vacant and ungranted, on the 7th of July, 1846."

It would unduly extend the length of this brief to embark upon a discourse on the nature and rights of Spanish Colonial municipalities and the rights preserved to them under the occupation of California by the United States and the Treaty of Guadalupe Hidalgo. Suffice it to say that the courts of California have declared that municipalities of that state have rights of such nature as come within the protection of the Constitution of the

United States and such declaration rests upon a consideration of the peculiar nature of California municipalities and the rights vested in them. It is therefore respectfully submitted that this Honorable Court should follow the decisions of the California courts and hold that the appellant City of Los Angeles is properly before this court and entitled to urge that its rights protected by the Constitution of the United States are violated.

POINT II.

The Question Presented Is Not Foreclosed by Previous Decisions.

Appellees contend that "since the legislature had power to authorize the acceptance of the drainage improvements by the Flood Control District and impose upon that district the burden of paying for such improvements, it also had the power to authorize the governing body of the district to accept such transfer without hearing." [R. 123.] The vice of appellee's contention is that while the legislature itself had power to make the transfer without giving property owners an opportunity to be heard, yet it is without power to delegate to an administrative board the authority to so act without making provision for such hearing. (*Fallbrook Irr. Dist. v. Bradley*, 164 U. S. 112; *Londoner v. City and County of Denver*, 210 U. S. 373; *Browning v. Hooper*, 269 U. S. 396; *Embree v. Kansas City etc. Road Dist.*, 240 U. S. 242.)

Appellees cite *Houck v. Little River Drainage Dist.* (1915), 239 U. S. 254, in support of their contention, but, as pointed out, the question presented therein "cannot properly be regarded as one of notice" (p. 264). That case involved the validity of a tax of twenty-five cents per acre levied for preliminary expenses for organization

and survey work of a drainage district which had been organized pursuant to the judgment of the Circuit Court as provided in the act under which the proceedings were instituted. In calling attention to the fact that a tax of the character there involved is but incidental to the formation of such a district and that the question of notice was not at issue, it was said, commencing at page 264:

> "* * * The owners whose lands are embraced in the district as proposed, and who have not signed the articles, are summoned and their objections to the organization and to the inclusion of their lands are heard. As a public corporation, with defined membership, the district, when established, is empowered to go forward with the expert investigations and surveys which, of necessity, must precede the adoption of a complete scheme. The outcome of these studies cannot be absolutely predicted; they may even result in the abandonment of the project. But probable feasibility has been shown, and the district, in consequence, organized. The preliminary work must then be done and its cost must be met. It is work undertaken by the district. The owners of the included lands (with one vote for each acre) elect the district officers (supervisors), who are to proceed with the surveys, etc., in the manner detailed. In the present case, the district was created upon an adequate showing of basis (236 Mo. p. 138), and it is not disputed that the plaintiffs in error received the notice to which they were entitled (Rev. Stat. [Mo.] 1909, §5497; Laws of Missouri, 1905, §8252). They were thus apprised of whatever legal consequences attached to the formation of the district with their lands in it. The present question, therefore, cannot properly be regarded as one of notice. The imposed burden, if it be in its nature a lawful one, is an incident to the organization which

they had abundant opportunity to contest. * * * It cannot be denied that the preliminary work had peculiar relation to the district. The initial inquiry, whatever its result, was for the purpose of securing the reclamation of the lands of which the district was comprised. In this inquiry, all the owners were interested. * * * And in this view, it is not material to consider whether the area of the district might subsequently be extended, or what particular lands within it would be appropriated for ditches, reservoirs, etc., if a plan of drainage were adopted and carried out. To say that the tax could not be laid except as a result of such an inquiry would be to assert in effect that as a preliminary tax it could not be laid at all. We know of no such limitation upon the state power."

The case of *Breiholz v. Pocahontas County* (1921), 257 U. S. 118, is also cited by appellees. In that case it was contended that notice and hearing was required before assessments could be levied for what might be called routine repairs and maintenance. This court adopted the language in the decision of the Supreme Court of Iowa, rendered in the case, that:

"* * * 'The work to be done may involve considerable expense or it may be a succession of petty repairs, each of which is comparatively inexpensive. To require that in each case the board must advertise the job and seek the lowest bidder [and hold hearings with respect to it] would be to hamper and prevent its efficient action without any corresponding benefit to the public.' [186 Iowa, 1147, 173 N. W. 1.]"

However, it is to be noted that this court called attention to the fact that (p. 124):

> "It is not necessary that we should consider whether a case can be imagined in which the ditches of a district might be enlarged, deepened, widened, and lengthened to an extent such as to constitute a new construction and a new taking of property, which would require a further notice and hearing before a new assessment for it could be constitutionally imposed, for we have no such case here. There was some widening of the ditches for the purpose of securing a better angle of repose for the sides, and some slight widening and deepening of the bottom at various points, for the purpose of getting a better fall and outlet for the water, but we quite agree with the two state courts that the changes made were of a character and extent fairly within the scope of a cleaning, alteration, and repair of the ditch system, and necessary to promote its usefulness."

It is respectfully submitted that adding to the Los Angeles County Flood Control District a burden of $4,234,001.25 to meet the outstanding obligations of the drainage districts in question may not be sustained on the theory of routine repairs, alterations or maintenance of structures of the Los Angeles County Flood Control District or as incidental to the formation of the district.

Appellees also call attention to *Rauch v. Himmelberger* (1924), 305 Mo. 70, which involved improvements and alterations to the works of the Little River Drainage District. It was held that no notice and hearing was required as "There is no material change in the plan of reclamation, in the sense that any new system of drainage is introduced." The court further stated that "the

fact that the work already done does not fully accomplish the full purpose of the organization of the district is, generally speaking, because of a present inadequacy of constructed ditches to accommodate the water which is delivered to them"; that "In part this is due to erosions and clogging and filling of ditches as time has progressed, and in part to the fact that some of the ditches were not made deep and wide enough in the first place," and that embankments and levees originally sufficient must be repaired. The decision follows the authority of the *Breiholz* case *(supra)*, 257 U. S. 118, and stresses the fact that the improvements are but carrying out the original plan of benefits to the lands of the district. Moreover, that decision being one of a state court, it is obviously not a previous decision of this court foreclosing the consideration of the question presented in the case at bar.

Appellees cite, as their final authority, *Davidson v. New Orleans* (1878), 96 U. S. 97, wherein certain drainage assessments were ordered approved by the Louisiana Supreme Court as against the contention that the legislature had no right to organize a private corporation to do the work and fix the price at which the work should be done; that the price so fixed was exorbitant; and that there may be a surplus collected under the assessment, in which event it would go into the city treasury. Obviously, the question of notice was not involved as the case arose out of a judicial proceeding to approve the assessment.

Evidently appellees are relying on that portion of the opinion wherein it is stated:

> "* * * That whenever by the laws of a State, or by state authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be of the whole State or of

> some more limited portion of the community, and thos laws provide for a mode of confirming or contestin the charge thus imposed, in the ordinary courts o justice, with such notice to the person, or such pro ceeding in regard to the property as is appropriate t the nature of the case, the judgment in such proceed ings cannot be said to deprive the owner of hi property without due process of law, however ob noxious it may be to other objections."

In this connection, attention is called to the concurrin opinion by Mr. Justice Bradley, wherein it is said, a page 107:

> "* * * that, in judging what is 'due process o law', respect must be had to the cause and object o the taking, whether under the taxing power, th power of eminent domain, or the power of assess ment for local improvements, or none of these; an if found to be suitable or admissible in the specia case, it will be adjudged to be 'due process of law' but if found to be arbitrary, oppressive and unjust it may be declared to be not 'due process of law'."

Appellees can find no support in these generalizations o what constitutes due process of law, in view of the fac that this court has on subsequent occasions specifically held that the nature of special assessments for local im provements levied by local administrative boards are lack ing in due process of law unless those whose lands ar to be burdened therewith are given notice thereof and a opportunity to be heard of the question of benefits to th lands to be assessed. (*Fallbrook Irr. Dist. v. Bradley (supra)*, 164 U. S. 112; *Londoner v. City and County o*

Denver, 210 U. S. 373; *Browning v. Hooper (supra),* 269 U. S. 396; *Embree v. Kansas City etc. Road District (supra),* 240 U. S. 242.)

It is respectfully submitted that an analysis of the decisions cited by appellees shows that the question presented in this case is not foreclosed by the previous decisions of this Honorable Court.

POINT III.

The Questions Involved Are Substantial and Warrant This Court's Taking Jurisdiction.

The contention of appellees that "the questions involved are too unsubstantial to justify the Supreme Court taking jurisdiction" [R. 124] is answered in *Hamilton v. Regents of the University of California* (1934), 293 U. S. 245, wherein it was said, at page 258:

> "And the appellees insist that this appeal should be dismissed for the want of a substantial federal question. But that contention cannot be sustained for we are unable to say that every question that appellants have brought here for decision is so clearly not debatable and utterly lacking in merit as to require dismissal for want of substance."

Appellees contend that "the flood control district was created by the legislature and therefore property owners within it will not be heard to say that their property is taken without due process of law" [R. 124], and "that when the legislature forms a special assessment district and designates its boundaries, property owners in such district cannot assail the action of the legislature unless such action is palpably arbitrary and a plain abuse of power". [R. 125.]

Appellants readily admit that where a special assessment district is created by the legislature, property owners are not entitled to a a hearing on the question of benefits to the lands assessed. Appellants contend, however, that the transfer of the drainage district works and obligations to the Flood Control District was not made by the legislature but by the Board of Supervisors and that therefore it was essential that the statute authorizing the Board of Supervisors, in their discretion, to make such transfers provide for notice and hearing. This is the crux of the controversy and the authorities cited by appellees are not directed to the point in dispute. They base their argument on the hypothesis that the transfer of the drainage districts' works and obligations is the act of the legislature, whereas appellants contend that it is the act of the Board of Supervisors. Appellants frankly admit that they have found no decisions involving special assessments where this precise point has been considered and apparently appellees have likewise been unsuccessful. However, there are decisions where courts have been called upon to determine whether a particular act is one of the legislature or of a local board.

In *Stanley v. Jeffries* (1929), 86 Mont. 114, it was held that an act of the legislature which authorized the assumption by municipalities of the payment of bonds and warrants of special improvement districts theretofore created, if a majority of the taxpaying electors should consent thereto, was not violative of the constitutional prohibition in that state against the legislature's passing any law

"which imposes on the people of any county or municipal subdivision of the state a new liability in respect to transactions or considerations already passed," for the reason that (p. 133):

> "Herein the Legislature did not attempt to impose a liability upon the people with respect to past transactions, but merely gave them the option to impose such a burden upon themselves if they saw fit, which, in so far as this inhibition of the Constitution is concerned, they may do."

In *Amos v. Mathews* (1930), 99 Fla. 1, the question involved was whether a statute providing that gasoline tax revenues should be apportioned to counties in proportion to their bonded indebtedness for roads and bridges was violative of the constitutional provision against using state taxes for local purposes. In holding that the use of tax moneys for the payment of such road and bridge bonds would be for a local purpose, it was pointed out that the legislature might have provided for the construction of the roads and bridges in the first place but that it did not do so, and that (p. 23):

> "The counties and districts could have refrained, but they did not; they borrowed the money by issuing bonds, and constructed the roads. The Legislature merely authorized; it did not compel. So each of the counties and districts, of its own choice, took the necessary steps to issue the bonds upon the ground that the construction of the roads in question constituted a county (or district) purpose, which it was, although the same construction projects might have been accomplished by the state as a state purpose. Construction of these roads, however, as local pro-

> jects has been completed, and that transaction is at an end. There remains only the payment of the local obligations thus incurred. The county and district bonds to pay for those roads were issued and validated as county and district bonds. Hence their legal status became fixed as purely county and district obligations, issued for a local purpose. They were not, and could not be, state obligations."

In *Miller & Lux v. Board of Supervisors* (1922), 189 Cal. 254, the validity of an order of the Board of Supervisors calling an election for the establishment of the Madera Irrigation District was attacked upon the ground, among others, that "no evidence was introduced in support of or opposed to the objections of the petitioner that its lands would not be benefited by the irrigation system described in the petition or by the formation of said district."

In holding that the petition stated a cause of action, it was said, at page 277:

> "In considering the constitutionality of the validating act as an act *creating* the Madera Irrigation District we meet with several difficulties. In the first place, the conclusive presumption indulged in by the courts to the effect that the legislature had duly considered the benefits to be derived by the lands included within the district is hardly applicable where the legislature expressly adopts the findings of the board of supervisors as to benefits."

Appellants respectfully submit that authorities such as these support the contention that when the legislature merely authorizes something to be done, at the discretion of a local administrative board, it is not the act of the legislature but of the local board, and it follows that sec-

tion 13½ of the Los Angeles County Flood Control Act, which confers discretionary power upon the Board of Supervisors to transfer, in their discretion, the drainage district works of the classes described therein, a transfer made under the authority of this section by the Board of Supervisors is not the act of the legislature.

Appellees contend that "the statute in question was an implied finding by the legislature that the drainage works authorized to be accepted by the Flood Control District were useful and necessary for flood control purposes." [R. 125.]

If appellees mean that the original enactment of the Los Angeles County Flood Control District Act was an implied legislative finding that the works and property authorized to be constructed to carry out the purposes of the act amounted to an implied finding by the legislature that such works would be of benefit to the district, appellants are in accord for such was the decision of the Supreme Court of California in *Los Angeles County Flood Control District v. Hamilton* (1917), 177 Cal. 119. But if appellees mean that section 13½ of the Los Angeles County Flood Control Act as adopted by the legislature in 1937, which is the statute under attack in this case, was an implied legislative finding of benefit, appellants submit that appellees are in error.

Section 16 of the Los Angeles County Flood Control Act gave the Board of Supervisors the power to acquire all works and property necessary for carrying out the purposes of the act. That section is part of the original enactment, but section 13½ did not place any such restriction upon the acts of the Board of Supervisors. It gave them discretionary power to acquire classes of property which, on their face, and also by force of judicial declara-

tion, were not calculated to be of benefit to the Flood Control District.

As before mentioned, in the statement of the case, the validity of Drainage District No. 1 was upheld on the ground that the drainage district was formed to serve a purpose different from that of the Flood Control District and was formed to take care of the peculiar needs of a local area within the Flood Control District. If these drainage district works were necessary and useful for the purposes of the Flood Control District, the Board of Supervisors could have purchased the same under the authority of section 16 of the act. However, it was not until the adoption of the 1937 amendment adding section 13½ to the act that the Board of Supervisors attempted to transfer these drainage district works to the Flood Control District, and the opinion of the Supreme Court in the case at bar specifically points out [R 82] that the petition shows that the Board of Supervisors in making the transfer was acting under the purported authority of section 13½ and not under section 16 of the act.

In *Palo Verde Irrigation District v. Seeley* (1926), 198 Cal. 477, wherein the Palo Verde Irrigation District was organized by the legislature in order to consolidate the functions of three separate local improvement districts, namely, a levee district, a drainage district and a mutual water system, the legislature, in the Consolidation Act, as amended, made an express finding to the effect that all lands within the irrigation district will be benefited by the improvements of the old drainage district, the old levee district and the mutual water system, and it was upon that ground that the Supreme Court of California distinguished that case from earlier decisions of the court, such as *Reclamation District No. 70 v. Birks* (1911), 159

Cal. 233, and a previous decision involving the validity of the original Palo Verde Irrigation District Act prior to its amendment (*Barber v. Galloway* (1924), 195 Cal. 1), which indicated that the obligations of one special assessment district could not be imposed upon another district by a statute which made no finding that the works would be of benefit to the district to which the obligation to pay for the same was transferred.

An extended argument upon this question is an argument directed to the merits of the case, which appellants deem to be a matter with which this court is not concerned at the present time. Appellants respectfully submit, however, that the merits of the controversy have been sufficiently stated to show that the questions involved are substantial and are sufficient to justify this Honorable Court in assuming jurisdiction of the controversy.

POINT IV.

The Decision of the Supreme Court of California Does Not Rest on a Non-Federal Ground.

Appellees contend that where the decision of the state court rests upon a nonfederal ground the Supreme Court will not entertain jurisdiction even though a federal question is involved [R. 126]. The entire decision of the Supreme Court of California is devoted to the question of whether notice and an opportunity to be heard upon the matter of transferring these drainage district works and obligations to the Los Angeles County Flood Control District was necessary in order to afford appellants due process of law. The whole decision is directed to that one point, and it is impossible to conceive how it could be urged that the decision rested upon a nonfederal ground.

Even if a nonfederal ground existed upon which the decision could have been based, the fact remains that no such ground was considered by the Supreme Court of California in arriving at its decision. As was said in *International Steel & Iron Co. v. National Surety Co.* (1936), 297 U. S. 657, commencing at page 665:

> "* * * The appellee says that estoppel, a nonfederal ground, adequate to support the judgment, was in the case from its inception. The point was not made or considered in the state courts. The validity of the act was adjudged on the issue of impairment of the obligation of the appellee's bond. We do not, therefore, consider the defense of estoppel.
>
> " 'The rule that, when the decision of a state court may rest upon a non-federal ground adequate to support it, this court will not take jurisdiction to determine the federal question, has no application where, as here, the non-federal ground might have been considered by the state court but was not.' "

In *New York Electric Lines Co. v. Empire City Subway Co.* (1914), 235 U. S. 179, where it was claimed that a certain resolution revoking a right to lay conduits in the city streets impaired the obligations of a contract with the city, this court stated, at page 186:

> "* * * The plaintiff in error insists that the resolution thus sustained was an unconstitutional impairment of the obligation of its contract with the city.
>
> "We think that it sufficiently appears that this question was raised in the state court and as the state court gave effect to the repealing resolution the case is properly here. It is therefore the duty of this court to determine for itself whether a contract existed and whether its obligation has been impaired."

The four cases cited by appellees [R. 126] contain nothing which indicates that the case at bar may be said to rest upon a nonfederal ground. For instance, the case of *Utley v. City of St. Petersburg* (283 U. S. 106) was a case where the Supreme Court of Florida definitely decided that the appellants therein were guilty of laches and estopped from asserting their rights. Such cases can have no possible bearing upon the issues presented in this case as the Supreme Court of California clearly based its decision upon the sole ground that the statute adding section 13½ to the Los Angeles County Flood Control District Act was not violative of the Federal Constitution and the rights of appellants asserted therein.

Appellees call attention to section 13 of article XI of the Constitution of the State of California, which they claim has given the legislature plenary power over irrigation districts, reclamation districts and drainage districts [R. 126]. Obviously, such constitutional provision, while giving the legislature power to act as regards the laws of the state, would not give the legislature the power to act in violation of the provisions of the Constitution of the United States (*McCulloch v. State of Maryland* (1819), 17 U. S. 316, 406). However, the courts of California have pointed out that section 13 of article XI of the Constitution of California does not give the legislature power to act contrary to the provisions of the state Constitution governing the exercise of legislative power in general. (See *Mordecai v. Board of Supervisors* (1920), 183 Cal. 434, 441.)

Appellees continue [R. 127-129] with substantially the same argument previously made that the legislature organized the Flood Control District and has the power to impose burdens upon the district after its organization,

and that the granting of authority to transfer such str tures indicates a legislative declaration of benefit to Flood Control District. But, as appellants have alre pointed out in answer to the same argument previou made, the legislature did not do these things but delega the exercise of the power to a local administrative boa namely, the County Board of Supervisors. The Cou Board of Supervisors is without legislative power over subject-matter and therefore notice and an opportunity be heard is an essential element of the valid exercise its administrative and *quasi*-judicial power. (*Fallbro Irr. Dist. v. Bradley* (*supra*), 164 U. S. 112; *Miller Lux v. Board of Supervisors* (*supra*), 189 Cal. 2 *People v. Van Nuys Lighting Dist.* (1916), 173 Cal. 7 798.) Moreover, as previously pointed out, these str tures were not of such nature as to indicate that they w be useful to the Flood Control District. It is appare that the decision of the Supreme Court does not rest on nonfederal ground but on the sole ground that the statu is not invalid as being in violation of the rights of app lants protected by section 1 of article XIV of the Amen ments to the Constitution of the United States.

Quoting from *People Etc. of New York Ex Rel. Brya v. Zimmerman* (1928), 278 U. S. 63, 67:

> "Of course, the decision must have been again the claim of invalidity, but it is not necessary th the ruling shall have been put in direct terms. If t necessary effect of the judgment has been to deny t claim, that is enough."

Conclusion.

In conclusion, it is respectfully submitted that the appellant City of Los Angeles is possessed of rights protected by the Constitution of the United States, that the questions presented in this case are federal questions of a substantial nature not foreclosed by previous decisions of this Honorable Court, that the decision of the Supreme Court of California rests solely upon a federal ground, and that, therefore, appellees' motion to dismiss this appeal should be denied as to both appellants.

Respectfully submitted,

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APPENDIX.

Pertinent Provisions of Los Angeles County Flood Control District Act, (Stats. 1915, p. 1502 as Amended by Stats. 1925, p. 973; 1927, pp. 300, 548, 1016; 1929, p. 1547; 1931, pp. 690, 1657; 1933, p. 1493; 1935, pp. 49, 1003, 1200; 1937, p. 1463.)

"Sec. 2. *Purposes of act.* The objects and purposes of this act are to provide for the control and conservation of the flood, storm and other waste waters of said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district, or to save or conserve in any manner, all or any of such waters, and to protect from damage from such flood or storm waters, the harbors, waterways, public highways and property in said district. * * *"

"Sec. 13½. The board of supervisors of said Los Angeles County Flood Control District, by a four-fifths vote, may accept on behalf of said district a transfer and conveyance of all, but not less than all, storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of the flood control district and within any of the following described classes, to-wit:

"1. Those which were constructed under the jurisdiction, control or supervision of the board of supervisors of the county of Los Angeles, and which are under the jurisdiction of said board;

"2. Those which were constructed by or for the county of Los Angeles or any drainage district within said county or by or for the Los Angeles County Flood Control District;

"3. Those constructed pursuant to the provisions o
act entitled 'An act to promote the drainage of wet, sw
and overflowed lands, and to promote the public he
in communities in which they lie,' approved March
1903, as amended, and those which have been constru
pursuant to the provisions of the Drainage District
provement Act of 1919, as amended, prior to Januar
1937;

"4. Those within any incorporated city, town
municipality of the county of Los Angeles whose le
lative body has transferred and conveyed such storm d
improvements, drainage improvements or drainage syst
to said flood control district pursuant to the provision
any act of the State of California authorizing such tra
fer and conveyance.

"Upon the transfer or conveyance to said flood con
district of any such storm drain improvements, drain
improvements or drainage systems, to pay the cost
expense of the construction of which bonds of any dr
age improvement district have been issued, said f
control district shall thereupon be and become liable
the payment of the principal upon the bonds of s
drainage improvement districts maturing subsequent
the date of such conveyance and upon the indebtedn
of such drainage improvement district represented by
terest coupons maturing subsequent to such date of tra
fer. The board of supervisors of the flood control dist
shall levy a special tax each year upon the taxable
property in said flood control district sufficient to pay
principal and interest on the bonds of said drainage
tricts as such principal and interest become due sub
quent to the date of such conveyance and transfer. S
tax shall be levied and collected on said real property

the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said county of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest on said drainage district bonds and for no other purpose. The principal and interest on such drainage district bonds shall be paid from the county treasury of said county of Los Angeles in the manner provided by law for the payment of principal and interest on bonds of said county.

"Whenever the board of supervisors of said Los Angeles County Flood Control District, by a four-fifths vote, has accepted on behalf of said district a transfer and conveyance of the storm drain improvements, drainage improvements or drainage systems heretofore mentioned, then, upon the conveyance to said flood control district by any city, town or municipality within the territorial limits of said district by a four-fifths vote of its legislative body of any storm drain improvement, drainage improvement or drainage system constructed therein, it shall thereupon accept the same and from and after such transfer or conveyance to such flood control district by such city, town or municipality said flood control district shall be solely liable for the operation, maintenance, repair and improvement of such storm drain improvements, drainage improvements or drainage systems.

"Upon the transfer or conveyance to said flood control district of any such storm drain improvements, drainage improvements or drainage systems, said flood control district shall thereafter do all things necessary for the proper operation, maintenance, repair and improvement of any such storm drain improvements, drainage improvements or drainage systems.

"The board of supervisors of the flood control district shall have power in any year to levy a special tax upon the taxable real property in said flood control district sufficient to pay the cost and expense of operating, maintaining, repairing and improving the storm drain improvements, drainage improvements or drainage systems so conveyed and transferred, which said tax shall be levied and collected at the same time and in the same manner as the general tax for county purposes, and the revenue derived from said tax shall be paid into the county treasury to the credit of said district and said board of supervisors shall have the power to control and order the expenditure thereof for said purposes. Taxes levied under authority of this section shall be separate and distinct from, and shall be in addition to the taxes authorized to be levied under section 14 of this act." [1937 Amendment.]

Sec. 16. * * *

"Said board of supervisors shall have power to do all work and to construct and acquire all improvements necessary or useful for carrying out any of the purposes of this act; and said board of supervisors shall have power to acquire either within or without the boundaries of said district, by purchase, condemnation, donation or by other lawful means in the name of said district, from private persons, corporations, reclamation districts, swamp land districts, levee districts, protection districts, drainage districts, irrigation districts, or other public corporations or agencies or districts, all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes of this act; to make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the exercise of the powers conferred by this act, or arising

out of the use, taking or damage of any property, rights of way or easements, for any of such purposes; to compensate any reclamation district, protection district, drainage district, irrigation district or other district, public corporation or agency or district, for any right of way, easement or property taken over or acquired by said Los Angeles county flood control district as a part of its work of flood control or conservation or protection provided for in this act, and any such reclamation district, protection district, drainage district, irrigation district or other district or public corporation or agency is hereby given power and authority to distribute such compensation in any manner that may be now or hereafter allowed by law; * * *."

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JAN 7 1939

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM 1938.

No. 368

RAY L. CHESEBRO,

Appellant,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, as the Board of Supervisors of the Los Angeles County Flood Control District; JOHN ANSON FORD, LELAND M. FORD, HERBERT C. LEGG, ROGER W. JESSUP and GORDON L. MCDOUGALL, as Members of and constituting the Board of Supervisors of the County of Los Angeles, and *ex officio* the Board of Supervisors of the Los Angeles County Flood Control District,

Appellees.

APPELLANT'S BRIEF.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM 1938.

No. 368

RAY L. CHESEBRO,

Appellant,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, as the Board of Supervisors of the Los Angeles County Flood Control District; JOHN ANSON FORD, LELAND M. FORD, HERBERT C. LEGG, ROGER W. JESSUP and GORDON L. MCDONOUGH, as Members of and constituting the Board of Supervisors of the County of Los Angeles, and *Ex officio* the Board of Supervisors of the Los Angeles County Flood Control District,

Appellees.

APPELLANT'S BRIEF.

STATEMENT OF THE CASE.

Appellant Ray L. Chesebro has taken this appeal from a judgment of the Supreme Court of the State of California denying the issuance of a writ of mandate. (*City of Los Angeles, et al., petitioners, v. Los Angeles County Flood Control District, et al., respondents,* not as yet officially reported but unofficially reported in 80 Pac. (2d) 479, and 95 Cal. Dec. 525.)

(A) Proceedings in State Court.

The case was before the Supreme Court of the State of California on an original proceeding for a writ of mandate. Appellant and the City of Los Angeles, a municipal corporation of the State of California, were the petitioners. The writ was sought in order to compel appellees to levy special assessments throughout the Los Angeles County Flood Control District, in conformity with the provisions of the Los Angeles County Flood Control District Act (Stats. 1915, p. 1502)* as that statute existed prior to its amendment by the state legislature in 1937 (Stats. 1937, p. 1763). The petition for the writ was based upon the ground that the 1937 amendment to the Los Angeles County Flood Control District Act was in violation of and repugnant to the Constitution of the United States in that it deprived petitioners of their property without due process of law as guaranteed to them by Article XIV of the Amendments to the Constitution of the United States. [R. 3.] The appellees demurred generally to the petition and the cause was submitted upon the pleadings, there being no questions of fact involved. [R. 14, 20.]

The City of Los Angeles also appealed from the judgment of the Supreme Court of the State of California, but the appeal as to it was ordered dismissed by this Honorable Court on October 17, 1938, "for the want of a substantial federal question."

---

*Reference is to California Statutes unless otherwise specified.

(B) Question Presented.

The question presented is whether appellant has been deprived of his property without due process of law, in violation of the provisions of paragraph 1 of article XIV of the Amendments to the Constitution of the United States, by the action of a local administrative board in transferring to a special assessment district, (Los Angeles County Flood Control District) in which appellant is a property owner, the works, together with the debts, obligations and cost of maintenance, of certain other special assessment districts, (drainage districts) under the purported authority of a statute which does not provide for notice to, and an opportunity for, property owners of the district to which the debts and obligations are transferred to be heard on the question of whether the transfer will be of special benefit to the lands of such district.

(C) Transfer of Drainage District Works and Obligations to the Los Angeles County Flood Control District.

On December 1, 1937, the Board of Supervisors of the County of Los Angeles, as the governing body of eleven separate drainage districts, transferred these districts to the Los Angeles County Flood Control District, and the Board, as the governing body of the Los Angeles County Flood Control District, accepted the transfer on behalf of the Flood Control District. [R. 2, 5.] Thereupon, by operation of law (Stats. 1937, p. 1763, to which specific reference is hereinafter made) the outstanding obligations of these drainage districts became the obligation of the Los Angeles County Flood Control District.

(D) Statutes Involved, and Formation of Special Assessment Districts Pursuant Thereto.

The facts in this case revolve around the provisions of the Los Angeles County Flood Control District Act (Stats. 1915, p. 1502), its amendment in 1937 (Stats. 1937, p. 1763), and two drainage district acts (Stats. 1903, p. 354; Stats. 1919, p. 731) under which the eleven drainage districts transferred to the Los Angeles County Flood Control District were organized.

(1) Los Angeles County Flood Control District Act—Formation of Los Angeles County Flood Control District.

Los Angeles County has an area of approximately 4000 square miles. In 1915 the state legislature created a special assessment district comprising almost the entire county and known as the Los Angeles County Flood Control District (Stats. 1915, p. 1502). The objects and purposes of the act creating the district are set forth in section 2, as amended in 1931 (Stats. 1931, p. 1657), as follows:

> "* * * to provide for the control and conservation of the flood, storm and other waste waters of said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district, or to save or conserve in any manner all or any of such waters, and to protect from damage from such flood or storm waters, the harbors, waterways, public highways and property in said district. * * *."

Section 2 also contains an enumeration of the powers of the district. While this section has been amended

from time to time for the purpose of conferring powers incidental to the carrying out of the purposes of the act, the following indicates the general scope of the powers conferred upon the governing board of the district and they have remained the same throughout the various amendments:

> "4. To take by grant, purchase, gift, devise or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.
>
> "5. To acquire or contract to acquire, lands, rights of way, easements, privileges and property of every kind, and construct, maintain and operate any and all works or improvements within or without the district necessary or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve, any works or improvements acquired by it as herein authorized. * * *
>
> "7. To incur indebtedness and to issue bonds in the manner herein provided.
>
> "8. To cause taxes to be levied and collected for the purpose of paying any obligation of the district in the manner hereinafter provided."

Provision is made, in section 4 of the Act, for hiring engineers to make a report on the best plan to control and conserve the flood and storm waters of the district, and, under section 6, the Board of Supervisors, upon adoption of such report, are authorized to "call a special election and submit to the qualified electors of said district the proposition of incurring a bonded debt in the amount and for the purposes stated in said report." A special

election was, in fact, held and the issuance of bonds was approved.

The legality of the bond issue and the formation of the district were sustained in *Los Angeles County Flood Control District v. Hamilton* (1917), 177 Cal. 119, wherein it was declared that "the scheme of the act is one of local improvement," and that levies made pursuant to the provisions of the Act, though denominated a tax, are, in fact, special assessments as distinguished from taxes.

Section 9 of the Act provides for the payment of the bonds voted by an annual assessment upon all the real property in the district, and section 14 provides for a like additional assessment, not to exceed ten cents per hundred, to be used for maintenance for the ensuing year or to carry out any of the objects or purposes of the Act.

Under section 16 of the Act the Board of Supervisors is given power to acquire:

> "either within or without the boundaries of said district, by purchase, condemnation, donation, or other lawful means, in the name of said district, from private persons, corporations, reclamation districts, swamp land districts, levee districts, protection districts, *drainage districts*, irrigation districts, or other public corporations or agencies or districts, all lands, rights of way, easements, property or materials *necessary or useful* for carrying out any of the purposes of this act; * * * to compensate any reclamation district, protection district, *drainage district*, irrigation district, or other district for any right of way, easement or property taken over or acquired by said Los Angeles County Flood Control District

as a part of its work of flood control or conservation or protection provided for in this act, and any such reclamation district, protection district, drainage district, irrigation district or other district or public corporation or agency is hereby given power and authority to distribute such compensation in any manner that may be now or hereafter allowed by law; * * * (Italics ours) *provided, further,* that nothing in this act contained shall be deemed to authorize said board of supervisors to raise money for said district by any method or system other than that by the issuing of bonds, or the levying of a tax upon the assessed value of all the real property in said district in the manner in this act provided."

(a) *1937 Amendment to Los Angeles County Flood Control District Act Authorizing Transfer of Drainage Districts to Los Angeles County Flood Control District.*

In 1937, section 13½ was added to the Act (Stats. 1937, p. 1763). This section provides, in part:

"The board of supervisors of said Los Angeles County Flood Control District, by a four-fifths vote, may accept on behalf of said district a transfer and conveyance of all, but not less than all, storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of the flood control district and within any of the following described classes, to wit:

"1. Those which were constructed under the jurisdiction, control or supervision of the board of supervisors of the county of Los Angeles, and which are under the jurisdiction of said board;

"2. Those which were constructed by or for the county of Los Angeles or any drainage district within

said county or by or for the Los Angeles County Flood Control District;

"3. Those constructed pursuant to the provisions of an act entitled 'An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in communities in which they lie,' approved March 21, 1903, as amended, and those which have been constructed pursuant to the provisions of the Drainage District Improvement Act of 1919, as amended, prior to January 1, 1937;

"4. Those within any incorporated city, town or municipality of the county of Los Angeles whose legislative body has transferred and conveyed such storm drain improvements, drainage improvements or drainage systems to said flood control district pursuant to the provisions of any act of the State of California authorizing such transfer and conveyance.

"Upon the transfer or conveyance to said flood control district of any such storm drain improvements, drainage improvements or drainage systems, to pay the cost and expense of the construction of which bonds of any drainage improvement district have been issued, said flood control district shall thereupon be and become liable for the payment of the principal upon the bonds of such drainage improvement districts maturing subsequent to the date of such conveyance and upon the indebtedness of such drainage improvement district represented by interest coupons maturing subsequent to such date of transfer. The board of supervisors of the flood control district shall levy a special tax each year upon the taxable real property in said flood control district sufficient to pay the principal and interest on the bonds of said drainage districts as such principal and interest become due subsequent to the date of such conveyance and transfer. Such tax shall

be levied and collected on said real property at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said county of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest on said drainage district bonds and for no other purpose."

At the same session, the legislature passed a statute (Stats. 1937, p. 1761), complementing section 13½ of the Los Angeles County Flood Control Act, authorizing to be transferred, under identical conditions and limitations, that which section 13½ authorizes to be accepted. It was under the purported authority of section 13½ that the Board of Supervisors transferred the eleven drainage districts to the Los Angeles County Flood Control District as pointed out by the Supreme Court of California in its decision. [R. 20.]

(2) The Drainage District Statutes—Formation of Drainage Districts.

Subsequent to the formation of the Los Angeles County Flood Control District the eleven drainage districts were organized by the County Board of Supervisors upon petition of property owners within the respective districts. Drainage Districts Nos. 1 and 3 were organized pursuant to the provisions of the Statutes of 1903, page 354 [R. 2], and Drainage Districts Nos. 8, 9, 11, 17, 22, 23, 25, 26 and 29 were organized under the provisions of the Drainage District Improvement Act of 1919 (Stats. 1919, p. 731). [R. 2.] The 1903 Statute was superseded by the Drainage District Improvement Act of 1919. Both

are general statutes by which county boards of supervisors are authorized, upon petition and *proper notice and hearing,* to form individual special assessment districts for drainage purposes.

Specific consideration need only be given to the Drainage District Improvement Act of 1919 (Stats. 1919, p. 731). That Act not only now governs districts formed thereunder but also those districts organized under the 1903 Statute. The Act provides that owners of land within a district which contains lands needing drainage may file with the board of supervisors of the county in which such lands are situated a petition for the establishment of necessary drains, giving the approximate boundary of the district proposed to be benefited.

Section 1 of the Act provides, in part, that:

> "* * * If said petition is granted the board of supervisors shall instruct the county surveyor to prepare plans and specifications for the improvement. The plans for the improvement shall contain a map or plat of the district on which shall be clearly shown in full detail the exterior boundaries of the district. *The boundaries of the district* as shown on said map or plat may include more or less territory than that indicated by the petition and *shall include all the lands which in the opinion of the county surveyor will be benefited by the improvement contemplated.* Said boundaries may be changed by the board of supervisors at the hearing on the resolution of intention, as provided in section 6 of this act to exclude lands which in its judgment will not be benefited by the improvement." (Italics ours.)

The Board of Supervisors is given power to pass on the extent of the boundaries of the district and may

exclude lands not found to be benefited by the proposed improvement. However, the Board of Supervisors is expressly prohibited, under section 9 of the Act, from changing the boundaries of the district as shown on the county surveyor's map so "as to include within the district any territory not within the boundaries as shown on the map or plat."

Provision is made for notice and an opportunity to object to the doing of the proposed work and the levy of the assessment therefor.

(E) Threatened Levy of Special Assessments on Lands Throughout Los Angeles County Flood Control District.

Pursuant to the provisions of section 13½ of the Los Angeles County Flood Control Act (Stats. 1937, p. 1763), the Board of Supervisors of the Flood Control District threaten to levy each year special assessments against all real property situated within the Los Angeles County Flood Control District, including real property which is situated outside the exterior boundaries of the drainage districts transferred to the Flood Control District, sufficient to meet the obligations incurred by such drainage districts. [R. 3.]

(F) Appellant's Theory of the Case.

Appellant contends that the action of appellees deprives him of his property without due process of law, in violation of the provisions of paragraph 1 of article XIV of the Amendments to the Constitution of the United States, in that appellees have violated the following elementary principles governing the levy of special assessments for local improvements:

1. A special assessment levied without determination of special benefits to the property assessed is void.
2. Where the question of the boundaries of the district to be assessed is left to the determination of a local administrative board, it is essential that property owners whose property is to be assessed shall be given a hearing upon the question as to whether or not the property included in the district would be benefited by the proposed improvement and the amount of the assessment to be charged against the property.
3. The establishment of an assessment district is a declaration that the only lands which will be benefited by the proposed improvement are the lands within the district.
4. Lands within the limits of a district can be assessed only for the benefits conferred on *such lands* and not for benefits on lands of another district.
5. Property which is not and cannot be benefited may not be included within a district in order that it may pay for benefits accruing to other property.

Applying these fundamental principles to the facts of the case at bar, it is appellant's contention that while the Los Angeles County Flood Control District was created by the legislature and the question of special benefit to the lands within the district formed by the contemplated local improvement was thereby determined by that body, yet this does not permit the legislature to later amend the act so as to grant unlimited discretionary power to a local administrative board to acquire on behalf of the Flood Control District various types of

structures, including those of special assessment drainage districts created by a local administrative board upon petition of property owners within the respective districts, the validity of whose organization is based upon the fact that they serve a purpose different from that of the Flood Control District and are of benefit only to limited areas within the Flood Control District, without the legislature's providing for notice and an opportunity for property owners within the Flood Control District to be heard upon the question whether a transfer of these structures will be of special benefit to the lands within the Flood Control District before the outstanding obligations of the drainage districts may be met by assessments upon the lands of the entire Flood Control District.

SPECIFICATION OF APPELLANT'S ASSIGNMENT OF ERRORS.

Appellant urges the following assignment of errors, as set forth in his petition for the allowance of his appeal. [R. 17.]

I.

The Supreme Court of the State of California erred in holding that the rights of appellant secured and protected by the provisions of section 1 of article XIV of the Amendments to the Constitution of the United States were not violated by a statute which authorizes the managing board of a special assessment district (Los Angeles County Flood Control District) created by the legislature to exercise discretionary power and accept a

transfer of the works and assume the obligations of other special assessment districts (drainage districts) subsequently created by the County Board of Supervisors upon petition of landowners within such other special assessment districts (drainage districts) without requiring that the owners of taxable real property within the special assessment district (Los Angeles County Flood Control District) proposing to accept the transfer be given an opportunity to be heard on the question of whether such transfer and assumption of obligation will be of benefit to the taxable real property of the district.

II.

The Supreme Court of the State of California erred in holding that by designating the classes of structures which might be transferred to the Los Angeles County Flood Control District at the discretion of the Board of Supervisors of Los Angeles County (the managing board of the Los Angeles County Flood Control District) it is to be presumed that the legislature concluded that the Los Angeles County Flood Control District would be benefited by the structures of such classes if and when they should be acquired on behalf of the Flood Control District.

III.

The Supreme Court of the State of California erred in holding that section 13½ of the Los Angeles County Flood Control District Act (Stats. of 1937, p. 1763) refers to specific classes of structures, the nature of which indicates their relative usefulness for the purposes of the Flood Control District without the necessity of any express declaration to such effect.

ARGUMENT.

Appellant relies upon the following points, as set forth in his Statement of Points to Be Relied Upon. [R. 30.]

POINT I.

The Supreme Court of the State of California Erred in Holding That the Rights of Appellant Secured and Protected by the Provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States Were Not Violated by a Statute Which Authorizes the Managing Board of a Special Assessment District (Los Angeles County Flood Control District, Theretofore Created by the Legislature) to Exercise Discretionary Power and Accept a Transfer of the Works and Assume the Obligations of Other Special Assessment Districts (Drainage Districts Subsequently Created by the County Board of Supervisors Upon Petition of Landowners Therein) Without Requiring That the Owners of Taxable Real Property Within the Special Assessment District (Los Angeles County Flood Control District) Proposing to Accept the Transfer Be Given an Opportunity to Be Heard on the Question of Whether Such Transfer and Assumption of Obligation Will Be of Benefit to the Taxable Real Property of the District.

Appellant contends that section 13½ of the Los Angeles County Flood Control District Act (Stats. 1937, p. 1763), purporting to authorize the transfer of drainage districts to the Los Angeles County Flood Control District by the managing boards of the respective districts, is void for want of provision therein for giving notice to property owners within the Flood Control District and an opportunity for them to be heard on whether such transfer to,

and consequent assumption of burdens by, the Flood Control District is of special benefit to the lands of the Flood Control District, for the reason: (a) that the Los Angeles County Flood Control District is a special assessment district formed for local improvement; (b) that special assessments levied without determination of special benefit to the lands assessed are void; (c) that where the boundaries of a special assessment district are not determined by the legislature, property owners must be given notice and an opportunity to be heard on the question of whether special assessments will be of special benefit to the lands assessed; and (d) that, with respect to the transfer of the drainage districts to the Flood Control District, the boundaries of the district to be assessed for the outstanding obligations of the drainage districts were not determined by the legislature, but by a local administrative board.

(A) THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT IS A SPECIAL ASSESSMENT DISTRICT FORMED FOR LOCAL IMPROVEMENT.

Upon the formation of the Los Angeles County Flood Control District by the legislature, in 1915, the people of the district voted in favor of the issuance of bonds to defray the cost of the improvements recommended in the engineers' report. The validity of the Act and the proceedings for the holding of the bond election were sustained by the Supreme Court of California in the case of *Los Angeles County Flood Control District v. Hamilton* (1917), 177 Cal. 119. In that case, in pointing out that there was nothing upon which it might be said that the legislature arbitrarily included lands within the district and that the levy to be made for payment of the cost of con-

structing and maintaining the improvements was a special assessment as distinguished from a general tax, it was said, commencing at pages 123, 128 and 129:

"* * * The scheme of the act is one of local improvement. The warrant and justification for charging the cost of such improvement upon designated lands is to be found, in theory at least, in the benefit to be derived by the lands assessed from the contemplated work. * * *

"It is next contended that the act is void because it provides for the raising of funds to pay for the work by means of a tax instead of by a special assessment. If such be the case, the act is a palpable violation of the provision of the state constitution, requiring that all property be taxed in proportion to its value. (Article XIII, section 1.) Since the act charges only the real, and not the personal, property in the district, it clearly violates this fundamental mandate, if the burden is a tax, strictly speaking. The interveners point to the fact that the legislature has used the word 'tax' throughout the act, and does not anywhere refer to the charge as an assessment. Furthermore, such 'tax' is to be levied and collected in the same manner, by the same machinery, and at the same time as general taxes. These facts are not, however, conclusive. The word 'tax' is used, with equal propriety, in two distinct senses. In its broad meaning the word includes both general taxes and special assessments. * * *

"* * * Taking, as, under the settled rule of constitutional law, we must, that construction which will uphold the act, we conclude that the legislature must have intended to use the meaning which would admit of the charge being construed as a special assessment. * * *"

To the same effect, see: *City of Inglewood v. County of Los Angeles*, 207 Cal. 697, and *Los Angeles Railway Corp. v. Los Angeles County Flood Control District*, 78 Cal. App. 173.

It is therefore apparent that the Los Angeles County Flood Control District is a special assessment district formed for local improvement and that the levies made by the district are special assessments as distinguished from general tax levies.

(B) SPECIAL ASSESSMENTS LEVIED WITHOUT DETERMINATION OF SPECIAL BENEFIT TO THE LANDS ASSESSED ARE VOID.

In order that special assessments may be validly levied there must be a determination that the lands assessed receive some special benefit and a special assessment levied without a determination of this question of special benefit is void. The invalidity of an assessment for local improvements because of the absence of a determination of special benefit to the land assessed, though the method of assessment would have been valid if based on a determination of special benefit, is vividly illustrated by the decision of this Honorable Court in *Village of Norwood v. Baker* (1898), 172 U. S. 269. The statute under consideration in that case provided, in part, that, in the event the improvement of streets or highways is financed by special assessments, as distinguished from a general tax, the cost (page 272):

> "* * * shall be assessed by the council on the abutting and such adjacent and contiguous or other benefited lots and lands in the corporation, *either* in proportion to the benefits which may result from the

> improvement, *or* according to the value of the property assessed, *or* by *the front foot of the property bounding and abutting upon the improvement,* * * *." [Italics by the Court.]

A street was opened through a tract of land, and, pursuant to the statute, the cost of the land condemned, plus the cost of the improvement and the proceedings, were assessed against the land through which the street was opened. In holding that the assessment was void in that it was not levied with regard to special benefit to the land assessed, this Honorable Court pointed out that special benefit is the only basis upon which special assessments may be upheld, and that (page 278):

> "Undoubtedly abutting owners may be subjected to special assessments to meet the expenses of opening public highways in front of their property—such assessments, according to well-established principles, resting upon the ground that special burdens may be imposed for special or peculiar benefits accruing from public improvements. * * *"

(Pages 285-6):

> "In *Thomas v. Gain*, 35 Mich. 155, 162 [24 Am. Rep. 535], Chief Justice Cooley, speaking for the supreme court of Michigan, said: 'It is generally agreed that an assessment levied without regard to actual or probable benefits is unlawful, as constituting an attempt to appropriate private property to public uses. This idea is strongly stated in *The Tide-Water Co. v. Coster*, 18 N. J. Eq. 519 [90 Am. Dec. 634], which has often been cited with approval in other cases. * * *"

(Pages 290-1):

"* * * It thus appears that the statute authorizes a special assessment upon the bounding and abutting property by the front foot for the entire cost and expense of the improvement, without taking special benefits into account. And that was the method pursued by the village of Norwood. The corporation manifestly proceeded upon the theory that the abutting property could be made to bear the whole cost of the improvement, whether such property was benefited or not to the extent of such cost.

"It is said that a court of equity ought not to interpose to prevent the enforcement of the assessment in question, because the plaintiff did not show nor offer to show by proof that the amount assessed upon her property was in excess of the special benefits accruing to it by reason of the opening of the street. This suggestion implies that if the proof had showed an excess of cost incurred in opening the street over the special benefits accruing to the abutting property, a decree might properly have been made enjoining the assessment to the extent simply that such cost exceeded the benefits. We do not concur in this view. As the pleadings show, the village proceeded upon the theory, justified by the words of the statute, that the entire cost incurred in opening the street, including the value of the property appropriated, could, when the assessment was by the front foot, be put upon the abutting property, irrespective of special benefit. The assessment was by the front foot and for a specific sum representing such cost, and that sum could not have been reduced under the ordinance of the village even if proof had been made that the costs and expenses assessed upon the abutting property exceeded the special benefits. The assessment was in itself an illegal one because it rested upon a basis that excluded any consideration of benefits. * * *"

In citing *Village of Norwood v. Baker (supra)*, appellant is fully aware of what has been said in subsequent decisions concerning the front foot method of assessment. However, the principle announced in that case, that (page 291):

> "* * * The assessment was in itself an illegal one because it rested upon a basis that excluded any consideration of benefits * * *"

has been reaffirmed repeatedly by this Honorable Court in the following cases:

Martin v. District of Columbia (1906), 205 U. S. 135, 140, 141;

French v. Barber Asphalt Paving Co. (1900), 181 U. S. 324, 345;

Wright v. Davidson (1900), 181 U. S. 371, 384, 385;

Houck v. Little River Drainage Dist. (1915), 239 U. S. 254, 265;

Myles Salt Co. v. Board of Com'rs (1915), 239 U. S. 478, 485;

Gast Realty Co. v. Schneider Granite Co. (1915), 240 U. S. 55, 59;

Hancock v. City of Muskogee (1918), 250 U. S. 454, 458.

Therefore, before lands within the Los Angeles County Flood Control District could be subject to the valid levy of special assessments to defray the outstanding indebtedness and the cost of maintenance of the works and improvements transferred from the drainage districts to the

Flood Control District it is essential that it be determined, in an appropriate manner by a competent body, that such works and improvements are of special benefit to the lands lying within the Flood Control District and outside the boundaries of the respective drainage districts.

(C) WHERE THE BOUNDARIES OF A SPECIAL ASSESSMENT DITRICT ARE NOT DETERMINED BY THE LEGISLATURE, PROPERTY OWNERS MUST BE GIVEN NOTICE AND AN OPPORTUNITY TO BE HEARD ON THE QUESTION OF WHETHER THE SPECIAL ASSESSMENTS WILL BE OF SPECIAL BENEFIT TO THE LANDS ASSESSED.

It is well settled by the decisions of this Honorable Court that due process of law requires that, where the fixing of the boundaries of a special assessment district is left to a local quasi-judicial or administrative board, property owners whose property is to be assessed shall be given a hearing upon the question as to whether or not their lands will be benefited by the improvement for which they are to be assessed.

In *Fallbrook Irrigation Dist. v. Bradley* (1896), 164 U. S. 112, this Honorable Court had under consideration the provisions of a statute of the state of California authorizing the creation of irrigation districts upon petition of property owners and an election held in the proposed district by the county board of supervisors. One of the grounds of attack upon the statute was "that under the act the landowner has no right to demand and no opportunity is given him for a hearing upon the question whether his land is or can be benefited by irrigation as proposed" (p. 156). In view of the fact that the statute in effect provided for a hearing upon notice by the board of super-

visors as to what lands would be benefited by the proposed system of irrigation, and required that the board include all lands to be benefited and exclude lands which would not be benefited by the proposed improvement, and that an opportunity was afforded to test the sufficiency of the petition, and that a hearing on the valuation and assessment of his land was also provided for, this court concluded that "the act provides for a hearing of the landowner both as to the question whether his land will be benefited by the proposed irrigation, and when that has been decided in favor of the benefit, then upon the question of the valuation and assessment of and upon his land included in the district" (p. 175). In considering the necessity for notice and an opportunity to be heard on the question of benefit to lands within a special assessment district, this court enunciated the following rule at pages 174 and 175:

> "* * * The legislature, when it fixes the district itself, is supposed to have made proper inquiry, and to have finally and conclusively determined the fact of benefits to the land included in the district, and the citizen has no constitutional right to any other or further hearing upon that question. The right which he thereafter has is to a hearing upon the question of what is termed the apportionment of the tax, i. e., the amount of the tax which he is to pay. *Paulsen v. Portland*, 149 U. S. 30-41 [37:637-641]. But when as in this case the determination of the question of what lands shall be included in the district is only to be decided after a decision as to what lands described in the petition will be benefited, and the decision of that question is submitted to some tribunal (the board of supervisors in this case), the parties whose lands are thus included in the petition are entitled to a

hearing upon the question of benefits, and to have the lands excluded if the judgment of the board be against their being benefited. *Unless the legislature decide the question of benefits itself, the landowner has the right to be heard upon that question before his property can be taken.* This, in substance, was determined by the decisions of this court in *Spencer v. Merchant,* 125 U. S. 345, 356 [31:763, 767], and *Walston v. Nevin,* 128 U. S. 578 [32:544]." [Italics ours.]

This rule has been reaffirmed in the following cases:

Londoner v. City and County of Denver (1907), 210 U. S. 373, 385

Browning v. Hooper (1925), 269 U. S. 396, 405;

Embree v. Kansas City etc. Road District (1915), 240 U. S. 242, 247;

Turner v. Wade (1920), 254 U. S. 64, 68;

Hancock v. City of Muskogee (1918), 250 U. S. 454, 458;

St. Louis & Kansas City Land Co. v. Kansas City (1915), 241 U. S. 419, 430;

Soliah v. Heskin (1911), 222 U. S. 522, 524.

(1) *The Board of Supervisors of the Los Angeles County Flood Control District Is an Administrative Board and Does Not Exercise Legislative Power.*

The Los Angeles County Flood Control District was formed by the legislature and under section 3 of the Act (Stats. 1915, p. 1502) the Board of Supervisors of the County of Los Angeles is made *ex officio* the governing board of the district. The drainage districts were formed

upon petition of property owners within the respective drainage districts and under the Drainage District Improvement Act of 1919 (Stats. 1919, p. 731) the Board of Supervisors of the County in which such a district is created, or has been created under the provisions of the 1903 Act (Stats. 1903, p. 354), is the governing board of the district. Under such circumstances the action of the Board of Supervisors of the county as the governing board of the respective special assessment districts is that of an administrative board as distinguished from a legislative body exercising delegated legislative power, and the Supreme Court of California has in effect so held in the case at bar and in the following cases:

Los Angeles County Flood Control District v. Hamilton (1917), 177 Cal. 119;

Miller & Lux v. Board of Supervisors (1922), 189 Cal. 254;

People v. Van Nuys Lighting District (1916), 173 Cal. 792;

Anaheim Sugar Co. v. County of Orange (1919), 181 Cal. 212, 221;

See, also:

In re Orosi Public Utility District (1925), 196 Cal. 43, 51, 52.

This Honorable Court has likewise so held in:

Fallbrook Irr. Dist. v. Bradley (1896), 164 U. S. 112.

(2) *No Hearing Is Afforded Property Owners on the Question of Benefits or the Amount of the Assessments Before They Are Fixed and Determined and Become a Lien Upon the Lands Assessed.*

Section 13½ provides that assessments thereunder "shall be levied and collected on said real property at the time and in the said manner as the general tax levy for county purposes," which is the same mode as provided in the statute as originally enacted, as pointed out in *Los Angeles Railway Corp. v. Los Angeles County Flood Control District* (1926), 78 Cal. App. 173, wherein it is said, at page 183:

> "By sections 10 and 14 of the act it is provided that these assessments shall be levied and collected 'at the time and in the same manner as the general tax levy for county purposes,' and, by section 11, all the provisions of the Political Code relating to the '*manner* of levying, assessing, equalizing, and collecting of taxes' are adopted and made a part of the act. The evident meaning of these provisions of the act is that, although the levy is an assessment for benefits as distinguished from a general tax, the *machinery* for the imposition and collection of the charge is the same as that provided for in the case of general taxes. Summarizing in the light of the decision in the Hamilton case, the situation is this: The legislature has created a special taxing district and has declared that all the real property in the District (with certain unimportant exceptions) will be benefited by the proposed improvement. For the purpose of raising funds it has authorized the supervisors to assess all this real property and has declared that the bonds issued by the District shall be a lien upon 'all the real property

in the District.' For the purpose of convenience to the owners of such property, as well as to the county officials, it has provided that these assessments shall be levied and collected in the same manner and at the same time as general taxes for county purposes. The adoption of this general taxing machinery, however, does not change the character of the charge which is imposed as a special assessment for benefits and the other provisions of the act plainly subject to such assessments all the real property in the District, including the operative real property of public utilities."

See, also:

City of Inglewood v. County of Los Angeles (1929), 207 Cal. 697, 700.

Under the provisions of the Political Code of California, "every tax due upon real property is a lien against the property assessed;" (§3718) "every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; and the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof;" (§3716) and the lien for taxes attaches "as of the first Monday of March in each year" (§3718). Taxes on real property may be paid in two installments, the first becoming due on November 1st and delinquent on December 5th and the last installment being due on January 20th and delinquent on April 20th. (§3746) In June of each year a delinquent tax list is published and the property upon which the taxes thereafter remain unpaid are, by operation

of law, sold to the state and five years thereafter sold at auction to private persons (§§3764, 3765, 3771a). While, under the provisions of sections 3673 to 3682 of the Political Code, a property owner is entitled to a hearing before the County Board of Equalization, yet, as stated in *Brookes v. City of Oakland* (1911), 160 Cal. 423, at 426, which involved a sewer district:

> "* * * At such hearing he would be permitted to show that his property was not subject to taxation for general city purposes, or that the valuation was too high, but there is no provision allowing him to show at that hearing that it was not benefited by the sewer, or that it should not have been included within the sewer district, or that it was not benefited in the same proportion as other property of like value."

In *Londoner v. City and County of Denver* (1908), 210 U. S. 373, this Honorable Court stated the rule, with a lengthy citation of prior decisions to like effect, as follows (p. 385):

> "* * * where the legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that, at some stage of the proceedings, before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing."

The foregoing rule announced in that decision was followed by the Supreme Court of California in *Brookes v. City of Oakland* (*supra*), 160 Cal. 423, 428; and in *People ex rel. Amestoy Estate Co. v. Van Nuys Lighting District of Los Angeles County* (1916), 173 Cal. 792, 798, and recognized in the case of *In re Orosi Public Utility District* (1925), 196 Cal. 43, 51.

At no stage during the process of arriving at a determination of what property shall bear the burden of the obligations of the drainage districts and the amount of the assessment therefor are property owners within the Flood Control District given an opportunity to be heard on whether the drainage district works are of benefit to lands within the Flood Control District, or on the amount of the assessment to be levied. This omission amounts to a denial of due process of law, as pointed out in *Londoner v. City and County of Denver* (*supra*), 210 U. S. 373, 385.

It is therefore apparent that when the determination of whether an assessment for special benefit shall be levied is left to an administrative board as in the case at bar, due process requires that there must be an opportunity given to property owners to be heard on the question of whether any special benefit will accrue to the lands to be assessed, an opportunity which the statute under consideration does not afford them.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 368

THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, AND RAY L. CHESEBRO,

Appellants,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, AS THE BOARD OF SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; JOHN ANSON FORD, LELAND M. FORD, HERBERT C. LEGG, ROGER W. JESSUP AND GORDON L. McDONOUGH, AS MEMBERS OF AND CONSTITUTING THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, AND EX OFFICIO THE BOARD OF SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

STATEMENT AS TO JURISDICTION.

RAY L. CHESEBRO,
City Attorney;
FREDERICK VON SCHRADER,
WILLIAM H. NEAL,
BOURKE JONES,
Counsel for Appellants.

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Appellees.

STATEMENT AS TO JURISDICTION.

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

The appellants, in support of the jurisdiction of the Supreme Court of the United States to review the above-entitled cause on appeal, respectfully represent:

A.

Statutory Provisions Sustaining Jurisdiction.

1. *Statutory Provisions.*

The statutory provisions believed to sustain the jurisdiction of the Supreme Court of the United States is Judicial Code, Section 237(a) [(28 U. S. C. A., § 344(a))], the relevant portions of which are as follows:

> "SEC. 237(a). A final judgment or decree in any suit in the highest court of the state in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. * * *"

Also, an Act of Congress, Jan. 31, 1928, c. 14 § 1, 45 Stat. 54 [28 U. S. Code, § 861 (a)], which provides that:

> "The writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

And, also, an Act of Congress, Jan. 31, 1928, c. 14, § 2, 45 Stat. 54, as amended April 26, 1928, c. 440, 45 Stat. 466 [28 U. S. Code, §861(b)], which provides that:

> "The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which section 861a of this title substitutes for a writ of error."

B.

Statute of the State, the Validity of Which is Involved.

The statute of the State of California, the validity of which has been sustained by the Supreme Court of the State of California, the highest court of said State, as not being violative of or repugnant to the provisions of the Constitution and laws of the United States, is Chapter 642 of the Statutes of 1937, page 1763, which is as follows:

"CHAPTER 642.

An act to amend the 'Los Angeles County Flood Control Act,' by adding thereto a new section, to be numbered 13½, relating to the conveyance and transfer to such district of storm drain improvements, drainage improvements and drainage systems, for the assumption of liability for the payment of bonds of drainage districts issued for the construction of storm drain improvements, drainage improvements and drainage systems so conveyed and transferred, for the operation, maintenance, repair and improvement of such storm drain improvements, drainage improvements and drainage systems and the levy of a special tax therefor.

[Approved by the Governor June 29, 1937. In effect August 27, 1937.]

The people of the State of California do enact as follows:

SECTION 1. The 'Los Angeles County Flood Control Act' is hereby amended by adding thereto a new section, to be numbered 13½, and to read as follows:

SEC. 13½. The board of supervisors of said Los Angeles County Flood Control District, by a four-fifths vote, may accept on behalf of said district a transfer and conveyance of all, but not less than all, storm drain improvements, drainage improvements or drain-

age systems lying within the territorial limits of the flood control district and within any of the following described classes, to wit:

1. Those which were constructed under the jurisdiction, control or supervision of the board of supervisors of the county of Los Angeles, and which are under the jurisdiction of said board;

2. Those which were constructed by or for the county of Los Angeles or any drainage district within said county or by or for the Los Angeles County Flood Control District;

3. Those constructed pursuant to the provisions of an act entitled 'An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in communities in which they lie,' approved March 21, 1903, as amended, and those which have been constructed pursuant to the provisions of the Drainage District Improvement Act of 1919, as amended, prior to January 1, 1937;

4. Those within any incorporated city, town or municipality of the county of Los Angeles whose legislative body has transferred and conveyed such storm drain improvements, drainage improvements or drainage systems to said flood control district pursuant to the provisions of any act of the State of California authorizing such transfer and conveyance.

Upon the transfer or conveyance to said flood control district of any such storm drain improvements, drainage improvements or drainage systems, to pay the cost and expense of the construction of which bonds of any drainage improvement district have been issued, said flood control district shall thereupon be and become liable for the payment of the principal upon the bonds of such drainage improvement districts maturing subsequent to the date of such conveyance and upon the indebtedness of such drainage improvement district represented by interest coupons maturing subsequent to such date of transfer. The board of supervisors of the flood control district shall levy a special

tax each year upon the taxable real property in said flood control district sufficient to pay the principal and interest on the bonds of said drainage districts as such principal and interest become due subsequent to the date of such conveyance and transfer. Such tax shall be levied and collected on said real property at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said county of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest on said drainage district bonds and for no other purpose. The principal and interest on such drainage district bonds shall be paid from the county treasury of said county of Los Angeles in the manner provided by law for the payment of principal and interest on bonds of said county.

Whenever the board of supervisors of said Los Angeles County Flood Control District, by a four-fifths vote, has accepted on behalf of said district a transfer and conveyance of the storm drain improvements, drainage improvements or drainage systems heretofore mentioned, then, upon the conveyance to said flood control district by any city, town or municipality within the territorial limits of said district by a four-fifths vote of its legislative body of any storm drain improvement, drainage improvement or drainage system constructed therein, it shall thereupon accept the same and from and after such transfer or conveyance to such flood control district by such city, town or municipality said flood control district shall be solely liable for the operation, maintenance, repair and improvement of such storm drain improvements, drainage improvements or drainage systems.

Upon the transfer or conveyance to said flood control district of any such storm drain improvements, drainage improvements or drainage systems, said flood control district shall thereafter do all things necessary for the proper operation, maintenance, repair and improvement of any such storm drain improvements, drainage improvements or drainage systems.

The board of supervisors of the flood control district shall have power in any year to levy a special tax upon the taxable real property in said flood control district sufficient to pay the cost and expense of operating, maintaining, repairing and improving the storm drain improvements, drainage improvements or drainage systems so conveyed and transferred, which said tax shall be levied and collected at the same time and in the same manner as the general tax for county purposes, and the revenue derived from said tax shall be paid into the county treasury to the credit of said district and said board of supervisors shall have the power to control and order the expenditure thereof for said purposes. Taxes levied under authority of this section shall be separate and distinct from, and shall be in addition to the taxes authorized to be levied under section 14 of this act."

C.

Date of Judgment and Date of Application for Appeal.

The final judgment of the Supreme Court of the State of California sought to be reviewed was rendered on June 9, 1938, and, in accordance with Section 1 of Rule XXX of the Rules adopted by the Judicial Council of California regulating the business of the Supreme Court and the District Courts of Appeal, said judgment became final on July 10, 1938, and the application for appeal was presented to the Chief Justice of the Supreme Court of the State of California on August 3d, 1938.

D.

Nature of Case and Rulings of the Supreme Court of the State of California.

1. *General Nature of the Case.*

The case is an original proceeding instituted on January 31, 1938, by the City of Los Angeles, a municipal corpora-

tion of the State of California, and Ray L. Chesebro, an individual, before the Supreme Court of the State of California, for the issuance of its peremptory writ of mandate commanding the Los Angeles County Flood Control District and the Board of Supervisors of the County of Los Angeles and said Board as the Board of Supervisors of the Los Angeles County Flood Control District, and the individual members of said Board, "to levy assessments on behalf of the Los Angeles County Flood Control District upon the taxable real property within said district solely in accordance with the provisions of the Los Angeles County Flood Control Act prior to the addition thereto, by chapter 642 of the Statutes of 1937, of Section 13½," and to refrain from levying, on behalf of the Los Angeles County Flood Control District, any assessment for the payment of the principal upon the bonds, or the indebtedness represented by interest coupons of said bonds, or for the cost or expense of operating, maintaining, repairing or improving the storm drain improvements, drainage improvements or drainage systems or certain drainage districts of limited area lying within the Los Angeles County Flood Control District, two of which were organized under the provisions of the Statutes of 1903, page 354, and nine of which were organized under the provisions of the Drainage District Improvement Act of 1919 (Stats. 1919, page 731), which the respondents transferred and conveyed to the Los Angeles County Flood Control District on December 1, 1937.

The proceeding by way of mandamus was resorted to in order that the Supreme Court of California might take original jurisdiction of the cause. By stipulation, the issuance of an alternative writ of mandate was waived and the cause was submitted upon the petition and the demurrer of the respondents thereto and the briefs of the respective parties.

On June 9, 1938, the Supreme Court of California rendered its judgment in the cause, that "the peremptory writ is denied and the alternative writ is discharged." The petitioners filed a petition for rehearing within the time allowed by the rules of said court, to wit, on June 27, 1938, and the same was denied on July 8, 1938.

2. *The Petition for the Writ of Mandate.*

It is alleged, in paragraph I of the petition, that each of the petitioners is the owner of taxable real property situated within the Los Angeles County Flood Control District and within the corporate limits of the City of Los Angeles, and outside of the exterior boundaries of the drainage districts heretofore referred to. Then follow allegations enumerating the drainage districts and setting forth the action of the Board of Supervisors in making the transfer, as heretofore outlined, and that the bond redemption and interest requirements of the drainage districts formed under the Drainage District Improvement Act of 1919 (Stats. 1919, p. 731) aggregate $4,234,001.25, and that the Board of Supervisors intend to levy annual special assessments against all real property situated within the Los Angeles County Flood Control District and outside the exterior boundaries of said drainage districts, including the real property of petitioners, sufficient to meet the outstanding obligations incurred for said works and improvements.

It is alleged, in paragraph VII of the petition:

> "That the levy of such special assessments described in paragraph VI will be illegal and void, in that it will be a special assessment levied against the property situated in one special assessment district to pay the debts and obligations of other special assessment districts, without regard to the accrual of benefits to the lands assessed, and will be a gift of public funds, in violation of the provisions of section 31 of article IV of the Constitution of the State of California; that the levy of said

special assessments will deprive petitioners of their property without due process of law and will deny to petitioners the equal protection of the laws, in violation of the provisions of article V and article XIV of the amendments to the Constitution of the United States and section 13 of article I of the Constitution of the State of California."

It is then alleged that petitioners have no plain, speedy and adequate remedy at law and that all the owners of taxable real property in the Los Angeles County Flood Control District and said drainage districts are the parties interested in the proceeding.

3. *The Demurrer.*

The respondents demurred generally, upon the ground that the petition did not state facts sufficient to constitute a cause of action upon which the writ sought by the petition could be issued.

4. *Rulings of the Court.*

In rendering judgment denying the issuance of a peremptory writ of mandate, the Supreme Court stated, in the opinion attached hereto, that:

"This proceeding in mandamus presents the question of the constitutionality of section 13½ of the Los Angeles County Flood Control District Act added to the Statute in 1937 (Stats. 1937, p. 1763). The original statute is found in the statutes of 1915 at page 1502.

"* * * In the course of the proceedings accepting the transfer the board did not expressly make a finding of the necessity or usefulness of such property for any of the purposes of the flood control district, nor was any hearing ordered or had on the question of such usefulness or necessity. The terms of the conveyance and acceptance provided for the transfer to the flood control district of funds on hand in the several drainage districts and for the assumption by the flood control district of the obligation to pay the principal

and interest remaining unpaid on all outstanding bonds, issued by such districts to cover the cost of the improvements conveyed, maturing subsequent to the date of the conveyance or transfer. The petition discloses an intent on the part of the board of supervisors to proceed pursuant to the power vested in it by said section 13½.

"• • • It is alleged and claimed by the petitioners that such special levy on lands within the flood control district but outside of the drainage districts whose obligations would be affected thereby is illegal and void because, so it is urged, it would be a special assessment levied against property without regard to the accrual of benefits to the lands assessed, and therefore would be a denial of due process and the equal protection of the laws enjoined by the state and federal constitutions. The petitioners seek to employ the remedy here invoked to restrain the assessment contemplated by the board on lands outside the drainage districts. The alternative writ issued.

"Questions of law only are involved.—They are presented by a demurrer interposed on behalf of the respondents.

"• • •

"The petitioners contend that inasmuch as the legislature in enacting section 13½ did not expressly find that drainage improvements constructed within the Los Angeles county flood control district are beneficial or useful to the lands in the district, and did not provide the means for a hearing and a finding in that respect by a designated body, an assessment levied on lands within the flood control district and outside the drainage districts to meet any part of the cost of such improvements constitutes a deprivation of due process of law. • • •

"• • • By designating in section 13½ the particular property which may be acquired by the flood control district it must be presumed that the legislature concluded that the entire flood control district would be so benefited by the use of the designated drainage im-

provements in the larger and broader program of the flood control act. * * * This particularity of description of the improvements and property authorized to be accepted by the district presupposes a prior inquiry and investigation on the part of the legislature and a finding by it that such designated improvements will be useful for the purposes of the district and beneficial to the territory comprising the flood control district. * * * In the matter of the acquisition of the property described in section 13½ the legislature has itself decided the usefulness of the property to the purposes of the flood control district. Section 13½, together with the enactment of a general statute on the same subject (Stats. 1937, p. 1761), evidences the adoption by the legislature of a comprehensive program of drainage and flood control in the various counties to be carried out by flood control districts, rather than divided among counties, drainage districts and flood control districts.

"* * *

"The following language from the case of *Los Angeles County Flood Control District* v. *Hamilton*, 177 Cal. 119, 124-125, might well be held applicable in disposing of the petitioners' contention herein:

" 'The mere passage of the act, then, must be taken to import a finding by the legislature that the proposed work will answer a public purpose and that its execution will benefit the land within the district to such an extent as to warrant the imposition upon such land of the cost in the manner provided. The findings thus implied are as fully effective as if declared in express terms in the act itself. * * *.' * * *

"* * * The result in that case has been obviated here by the action of the legislature declaring in effect that the lands so to be burdened have been or will be benefited by the transfer of the specified property. * * *"

5. *Grounds Upon Which It is Contended the Questions Involved Are Substantial.*

I.

A drainage district has the special purpose of the improvement of particular property and when it is so formed as to include property which is not and cannot be benefited directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation.

Myles Salt Co. v. *Board of Commissioners*, 239 U. S. 478.

II.

Where the fixing of the boundaries of a special assessment district is left to the Board of Supervisors, it is essential that property owners whose property is to be assessed shall be given a hearing upon the question as to whether or not their lands would be benefited by the proposed improvement and also a hearing upon the amount of the assessment, and any statute purporting to make the order of the board conclusive upon the property owner without such hearing is violative of both State and Federal constitutions.

Fallbrook Irr. Dist. v. *Bradley*, 164 U. S. 112;
Londoner v. *City and County of Denver*, 210 U. S. 373;
Browning v. *Hooper*, 269 U. S. 396;
Embree v. *Kansas City etc. Road District*, 240 U. S. 242;
Turner v. *Wade*, 254 U. S. 64;
Coe v. *Armour Fertilizer Works*, 237 U. S. 413.

A) The Los Angeles County Flood Control District is a special assessment district as distinguished from a taxing district.

Los Angeles County Flood Control District v. *Hamilton*, 177 Cal. 119.

III.

In so far as the transfer of the drainage districts to the Flood Control District is concerned, there has been no legislative action fixing the boundaries of the district to be assessed for the cost of the improvements.

A) Leaving the transfer of drainage districts to the Flood Control District at the discretion of the Board of Supervisors does not constitute a legislative act of making such a transfer if or when the Board of Supervisors elect to make the transfer.

See

Stanley v. *Jeffries*, 86 Mont. 114;
Amos v. *Mathews*, 99 Fla. 1, 65, 115.

B) Nor could a transfer under such circumstances be considered as supported by the presumption of a legislative finding of benefits to the lands burdened by such transfer as it is the act of the Board of Supervisors and not the legislature.

Miller & Lux v. *Board of Supervisors*, 189 Cal. 254.

IV.

The property authorized to be transferred to the Los Angeles County Flood Control District is not by its nature calculated to be of benefit to the Flood Control District.

A) The drainage districts in question were formed by the Board of Supervisors upon petition of landowners within limited areas of the Flood Control District subsequent to the formation of the Flood Control District by the legislature and the validity of Drainage District No. 1 was upheld in *Van de Water* v. *Pridham*, 33 Cal. App. 252, on the theory that the drainage district served a purpose different from that of the Flood Control District and was formed to take care of the peculiar needs of a local area within the Flood

Control District. A like ruling was made upon similar grounds in *Moore* v. *Thornburg*, 208 Cal. 657, wherein the validity of an improvement district formed within the limits of an irrigation district was upheld.

B) The establishment of an assessment district is a declaration that the only lands which will be benefited by the proposed works are the lands within the district.

Moulton v. *Parks*, 64 Cal. 166.

V.

Special assessments levied without a determination of special benefit to the land assessed are void.

Village of Norwood v. *Baker*, 172 U. S. 269.

VI.

The rights of the City of Los Angeles are such that they are within the protection of the Constitution of the United States.

A) The courts of California hold that the property of municipalities held for municipal purposes is invested with the security of private rights of individuals and the property right is of such nature as to be within the protection of the Constitution of the United States.

Grogan v. *City of San Francisco*, 18 Cal. 590, 613;

City of Beverly Hills v. *City of Los Angeles*, 175 Cal. 311, 314;

See, also:

Mt. Hope Cemetery v. *City of Boston*, 158 Mass. 509.

B) The Supreme Court of California, in the case at bar, recognized the right of the City of Los Angeles to urge the protection of the Constitution of the United States as grounds for the invalidity of the statute, and held that the statute did not violate the rights of the City protected by the Constitution of the United States. Under such circum-

stances, the Supreme Court of the United States will assume that the State may confer on a municipal corporation contract or property rights protected by the Federal Constitution against subsequent impairment by the State.

City of Boston v. *Jackson*, 260 U. S. 309.

C) The Supreme Court of the United States is bound by the decisions of the highest courts of the States as to the powers of their municipalities.

Railroad Commission of California v. *Los Angeles Ry. Corp.*, 280 U. S. 145.

D) Jurisdiction of the Supreme Court of the United States is not affected because the existence of the right for which constitutional protection is claimed depends upon State law.

Fox River Paper Co. v. *Railroad Com. of Wisconsin*, 274 U. S. 651.

E) The powers of the City of Los Angeles are not derived from the legislature but from a freeholders' charter directly provided for by the Constitution.

Los Angeles Gas & Elec. Corp. v. *City of Los Angeles*, 188 Cal. 307, 317.

F) *City of Trenton* v. *New Jersey*, 262 U. S. 937; *City of Pawhuska* v. *Pawhuska Oil & Gas Co.*, 250 U. S. 394, and similar cases distinguished. (In each of those cases the Supreme Court of the State had DENIED the existence of the right which the cities sought to have the Supreme Court protect; whereas in the case at bar the Supreme Court of the State recognizes the right of the City but denies that the statute abridges such right.)

E.

Cases Believed to Sustain the Jurisdiction of the Supreme Court of the United States.

The judgment is final.

State of Indiana v. *Brand* (decided U. S. Sup. Ct. Jan. 31, 1938), 82 L. Ed. Adv. Op. 444.

The court is one of last resort.

Hamilton v. *Regents of the University of California*, 293 U. S. 243.

Proceedings in mandamus is a suit.

Detroit & Mackinac Ry. Co. v. *Michigan R. R. Com.*, 240 U. S. 564.

Unconstitutionality of the statute was sufficiently raised and decided adversely to appellant's claim.

People etc. of New York ex rel. Bryant v. *Zimmerman*, 278 U. S. 63.

The Federal questions raised are substantial.

Hamilton v. *Regents of the University of California*, 293 U. S. 243.

It is not necessary to attack the validity of an entire statute.

Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282.

An appeal lies from original proceedings in highest court of State.

Hartman v. *Greenhow*, 102 U. S. 672.

F.

Stage in Proceedings and Method of Raising Federal Questions.

The case is an original proceeding in the Supreme Court of California. The Federal questions were raised in the petition for the issuance of the alternative writ of mandate, as set forth under subdivision 2 of Part D of this statement as to jurisdiction, and the Supreme Court of California, in its opinion (a copy of which is attached hereto), recognized that such questions were raised and decided them adversely to appellants, as set forth in subdivision 4 of Part D of this statement as to jurisdiction.

It is respectfully submitted that the Supreme Court of the United States has jurisdiction of this appeal by virtue of the statutory provisions set forth in Part A of this statement as to jurisdiction.

Respectfully submitted,

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EXHIBIT "A".

Decision of the Supreme Court of the State of California.

(Endorsed:) Filed June 9, 1938. B. Grant Taylor, Clerk, by Coultis, L. A. Deputy.

In Bank

S. F. No. 15990.

THE CITY OF LOS ANGELES, a Municipal Corporation, *et al.*, *Petitioners,*

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT *et al.*, *Respondents.*

This proceeding in mandamus presents the question of the constitutionality of section 13½ of the Los Angeles County Flood Control District Act added to the statute in 1937 (Stats. 1937, p. 1763). The original statute is found in the statutes of 1915 at page 1502.

The petitioners allege their ownership of lands situated and assessable within the Los Angeles County Flood Control District but outside the confines of certain named drainage districts within the flood control district. The petition shows that in December, 1937, the board of supervisors of Los Angeles county, acting as the board of supervisors of the flood control district, by resolution, accepted a transfer to the flood control district of the storm drain improvements, drainage improvements and drainage systems of drainage districts numbers 1 and 3, organized under the statute of 1903 (Stats. 1903, p. 354), and of drainage districts numbers 8, 9, 11, 17, 22, 23, 25, 26 and 29, organized under the Drainage District Improvement Act of 1919 (Stats. 1919, p. 731), and amendatory acts. All of said drainage districts and drainage district improvements are located within the territory comprising the Los Angeles County Flood Control District. In the course of the proceedings accepting the transfer the board did not expressly

make a finding of the necessity or usefulness of such property for any of the purposes of the flood control district, nor was any hearing ordered or had on the question of such usefulness or necessity. The terms of the conveyance and acceptance provided for the transfer to the flood control district of funds on hand in the several drainage districts and for the assumption by the flood control district of the obligation to pay the principal and interest remaining unpaid on all outstanding bonds, issued by such districts to cover the cost of the improvements conveyed, maturing subsequent to the date of the conveyance or transfer. The petition discloses an intent on the part of the board of supervisors to proceed pursuant to the power vested in it by said section 13½.

It is alleged that the bond redemption and interest requirements of drainage districts numbers 8, 9, 11, 17, 22, 23, 25, 26, and 29 aggregate $4,234,001.25; but what proportion, if not all, of this amount represents obligations maturing subsequent to the date of transfer is not indicated. It is stated that the board of supervisors intends to levy annual special assessments upon all the real property within the flood control district sufficient to meet the outstanding obligations incurred for the drainage improvements accepted by the board. It is alleged and claimed by the petitioners that such special levy on lands within the flood control district but outside of the drainage districts whose obligations would be affected thereby is illegal and void because, so it is urged, it would be a special assessment levied against property without regard to the accrual of benefits to the lands assessed, and therefore would be a denial of due process and the equal protection of the laws enjoined by the state and federal Constitutions. The petitioners seek to employ the remedy here invoked to restrain the assessment contemplated by the board on lands outside the drainage districts. The alternative writ issued.

Questions of law only are involved. They are presented by a demurrer interposed on behalf of the respondents.

By section 13 of article XI of the state Constitution the legislature is given power "to provide for the supervision, regulation and conduct, in such manner as it may determine, of the affairs of irrigation districts, reclamation dis-

tricts or drainage districts organized or existing under any law of this state". (Amendment adopted Nov. 3, 1914.)

The object and purposes of the Los Angeles Flood Control District Act were stated in section 2 to be: "to provide for the control of the flood and storm waters of said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district, or to save or conserve in any manner, all or any of such waters, and to protect from damage from such flood or storm waters the harbors, waterways, public highways and property in said district". By section 16 the board of supervisors was given the power to do all work and to construct and acquire all improvements necessary or useful for carrying out any of the purposes of the act; also to acquire either within or without the boundaries of the district, by purchase, condemnation, donation or by other lawful means, from private persons, corporations, reclamation districts, swamp land districts, levee districts, protection districts, drainage districts, irrigation districts, or other public corporations, or agencies, or districts, all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes of the act, and to compensate any private owner or reclamation or other district or agency for property taken over or acquired by the flood control district as a part of its work of control or conservation or protection.

Section 13½ added by Statutes of 1937 provides that the board of supervisors of the Los Angeles County Flood Control District, by a four-fifths vote may accept a transfer and conveyance of all, but not less than all, storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of the flood control district and within certain described classes, including those constructed prior to January 1, 1937, pursuant to provisions of the 1903 and 1919 acts hereinabove mentioned. Said section 13½ also contained the following provisions: "Upon the transfer or conveyance to said flood control district of any such storm drain improvements, drainage improvements or drainage systems, to pay the cost and expense of the construction of which bonds of any drainage improvement district have been issued, said flood control district shall thereupon be and

become liable for the payment of the principal upon the bonds of such drainage improvement district maturing subsequent to the date of such conveyance and upon the indebtedness of such drainage improvement district represented by interest coupons maturing subsequent to such date of transfer. The board of supervisors of the flood control district shall levy a special tax each year upon the taxable real property in said flood control district sufficient to pay the principal and interest on the bonds of said drainage districts as such principal and interest become due subsequent to the date of such conveyance and transfer. Such tax shall be levied and collected on said real property at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said county of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest on said drainage district bonds and for no other purpose."

It will be noted that neither section 16 nor section 13½ provides for a hearing prior to acquisition of any of the property described therein, and that section 16 alone expressly restricts the acquisition of property to that which is necessary or useful for the purposes of the district. It will also be noted, however, that section 16 does not refer to specific property, such as is described in section 13½. In other words, section 16 provides generally for the acquisition of such property as, in the opinion of the board of supervisors, may be necessary or useful to carry out the purposes of the flood control act. Section 13½, on the other hand, refers to the acceptance of a limited class of described property, namely, the specified storm drain improvements, drainage improvements, and drainage systems, which from the nature of such property indicates without any express declaration its relative usefulness for the purposes of the flood control district.

The petitioners contend that inasmuch as the legislature in enacting section 13½ did not expressly find that drainage improvements constructed within the Los Angeles County Flood Control District are beneficial or useful to the lands in the district, and did not provide the means for a hearing and a finding in that respect by a designated body, an assess-

ment levied on lands within the flood control district and outside the drainage districts to meet any part of the cost of such improvements constitutes a deprivation of due process of law. The contention, however, is necessarily grounded on the hypothesis that the drainage improvements are not *per se* useful for the purposes of the flood control district and therefore not beneficial to all the lands within that district, and that the absence of any legislative declaration of such benefit, or any provision for a hearing on the question of benefit to the lands affected, is fatal to the validity of the section.

To support their theory the petitioners argue that when the drainage districts were formed, especially the districts organized subsequent to the creation of the flood control district, they presumably included all of the territory which would be benefited by the respective drainage improvements, and that the omission from the districts of any surrounding area conclusively indicates that such area would not be benefited thereby. The petitioners rely generally on cases which hold that only the lands benefited may be assessed to pay the cost of such special improvements (*Spring St. Co.* v. *City of Los Angeles*, 170 Cal. 24, *A. T. and S. F. Railway Co.* v. *Reclamation Dist. No.* 404, 173 Cal. 91), and on cases holding that to permit assessments for special improvements without a legislative declaration of benefit to the lands assessed or a provision for a hearing and finding by a properly constituted body, is to deprive the owner of due process in violation of the state and federal Constitutions. (*Fallbrook Irrigation Dist.* v. *Bradley*, 164 U. S. 112; *Miller & Lux* v. *Board of Supervisors*, 189 Cal. 254.)

Nevertheless the petitioners correctly concede that if the legislature itself has found, either by designating the territory to comprise the district or by expressly so declaring, that the lands included or affected are benefited, such a finding presupposes appropriate and adequate inquiry and is conclusive upon the property owners in the district and upon the courts (*Fallbrook Irrigation Dist.* v. *Bradley*, *supra*; *People* v. *Sacramento Drainage Dist.*, 155 Cal. 373, 386; *Brookes* v. *City of Oakland*, 160 Cal. 423; *Miller & Lux* v. *Board of Supervisors*, *supra*); and in such case it is not essential that the benefits be realized in fact, if otherwise

there is any reasonable foundation for the finding of potential benefit. (*Board of Directors of Crawford County Levee Dist.* v. *Dunbar*, 107 Ark. 285, 155 S. W. 96.)

The petitioners point to the inclusion in section 16 of language specifying that lands or improvements within or without the district to be acquired pursuant to the authority of that section, must be such as will be necessary or useful for carrying out the purposes of the act, and to the absence of any such qualifying language in section 13½, as indicative of the invalidity of the latter section. The petitioners, however, have not fully appreciated the necessity for the inclusion of such qualifying language in section 16 and the reason for its omission from section 13½. As noted, section 16 confers the general power upon the board of supervisors to acquire such lands or works, wherever they may be situate, as may be necessary or useful for the purposes of the act. In contrast to that, by section 13½ the legislature itself has specified particular property which may be acquired by the flood control district. Flood control necessarily covers a much larger field and a broader program than one restricted merely to drainage of a specified area. It conceivably includes works or improvements which may be far removed from the lands which will be protected and benefited thereby. It is therefore within the legislative discretion to conclude that a system of drainage improvements, although initially employed to the direct beneficial use of a restricted area for drainage purposes, may be employed in conjunction with flood control facilities for the benefit of a much larger area. By designating in section 13½ the particular property which may be acquired by the flood control district it must be presumed that the legislature concluded that the entire flood control district would be so benefited by the use of the designated drainage improvements in the larger and broader program of the flood control act.

The petitioners do not question the propriety of a legislative finding that the designated improvements would be so beneficial. They complain of the absence of an express declaration in that regard. But from the import of section 13½ the legislature must be deemed to have exercised its plenary power to make such a finding. That section is not construed as granting a general power to the board

of supervisors to acquire properties for the use of the district. It is rather a special declaration that it may acquire on behalf of the flood control district certain designated properties, namely, drainage works and improvements and systems constructed prior to January 1, 1937, by certain classes of drainage districts within the flood control district. This particularity of description of the improvements and property authorized to be accepted by the district presupposes a prior inquiry and investigation on the part of the legislature and a finding by it that such designated improvements will be useful for the purposes of the district and beneficial to the territory comprising the flood control district. It is obvious therefore that sections 16 and 13½ have no necessary relation to each other. Nor is section 13½ inconsistent with section 4 of the act, which requires the board of supervisors to employ engineers to formulate the best plan for carrying out the purposes of the act. In the matter of the acquisition of the property described in section 13½ the legislature has itself decided the usefulness of the property to the purposes of the flood control district. Section 13½, together with the enactment of a general statute on the same subject (Stats. 1937, p. 1761), evidences the adoption by the legislature of a comprehensive program of drainage and flood control in the various counties to be carried out by flood control districts, rather than divided among counties, drainage districts and flood control districts.

The Constitution and the decisions do not preclude the carrying out of that program by the enactment of the legislation referred to. As pointed out in *Hadley* v. *Dague*, 130 Cal. 207, 220, the mode in which the expense is to be borne as well as the district which is to bear the expense and the manner of distributing the expense are legislative questions. It was there held that although the theory upon which the expense is charged to the land in the district is that the property has received a particular benefit, nevertheless the validity of the assessment does not depend upon the ability to show that the property received a benefit commensurate with the amount of the assessment, that is, that the benefit is identical with the burden. And quoting

from *Fallbrook Irrigation District* v. *Bradley, supra,* the court recognized that although the method of arriving at the amount of the burden may in some instances result in inequalities, that circumstance was "far from arising to the level of a constitutional problem, and far from the case of taking property without due process of law". The Hadley case referred to the case of *Lent* v. *Tillson,* 72 Cal. 428, and the statement therein that the benefits need not be immediate, but that the only just limitation, if any existed, with respect to assessing for such benefits, was that "a tax will not be upheld when the courts can plainly see that the legislature has not really exercised its judgment at all, or that manifestly and certainly no such benefit can or could reasonably have been expected to result. The judge should not place his mere opinion against that of the legislature."

The following language from the case of *Los Angeles County Flood Control District* v. *Hamilton,* 177 Cal. 119, 124-125, might well be held applicable in disposing of the petitioners' contention herein: "The mere passage of the act, then, must be taken to import a finding by the legislature that the proposed work will answer a public purpose and that its execution will benefit the land within the district to such an extent as to warrant the imposition upon such land of the cost in the manner provided. The findings thus implied are as fully effective as if declared in express terms in the act itself. (*San Christina Inv. Co.* v. *San Francisco,* 167 Cal. 762, 769.) The fixing of the district which is to bear the expense of a local improvement and the mode in which such expense is to be borne and distributed are primarily legislative questions." It has long been settled that adjustments in such matters which are within the legislative discretion may be made subsequent to the organization of such corporate bodies and districts. (*Johnson* v. *City of San Diego,* 109 Cal. 468; *Palo Verde Irr. Dist.* v. *Seeley,* 198 Cal. 477.)

The legislature has been invested with an enlarged discretion by section 13 of article XI of the Constitution. Cogent reasons must therefore appear in support of objections urged against particular statutory provisions relat-

ing to the conduct of such districts enacted subsequent to the adoption of the constitutional amendment before the court would be justified in declaring them invalid. (*Wores* v. *Imperial Irrigation Dist.*, 193 Cal. 609, 622.)

Our conclusions herein are not opposed to the holding in the case of *Reclamation District* v. *Birks*, 159 Cal. 233, relied upon by the petitioners. The present case does not involve a "sale" of improvements from one district to another as was contemplated by the action of the trustees of the reclamation district in the cited case. It was held in the *Birks* case that one district may not acquire property of another and impose upon the property owners payment of the debts of the one from which the property has been acquired unless the land so burdened will derive a commensurate benefit therefrom. The result in that case has been obviated here by the action of the legislature declaring in effect that the lands so to be burdened have been or will be benefited by the transfer of the specified property. The same distinction supported the validity of an act which authorized the transfer of properties from a smaller to a larger district in the case of *Barber* v. *Galloway*, 195 Cal. 1. The case of *City of Redwood City* v. *Myers*, 7 Cal. (2d) 283, does not support the petitioners' position. That case involved the validity of the Municipal Investment Bond Act (Stats. 1915, p. 109), which purported to permit the municipality to levy an assessment for the purpose of issuing bonds the proceeds of which were to be used for purchasing and retiring improvement bonds of the city or its improvement districts. In line with the case of *Reclamation District* v. *Birks, supra*, it was held that the legislature was without the power to authorize the imposition of a tax upon all the lands in the municipality for the purpose of retiring a bond issue, the proceeds of which were to be used for purchase of such bonds; that the permanent purchase of bonds merely to effect their retirement and as a relief measure was not a beneficial use of the proceeds of the bond issue within the holding of the *Birks* case.

Our conclusion herein that the statute involved is valid also finds support in *Palo Verde Irrigation District* v.

Seeley, supra. In that case the writ of mandate directed the respondent to sign refunding bonds pursuant to the Palo Verde Irrigation District Act (Stats. 1923, p. 1067.) That act provided for the organization of the Palo Verde Irrigation District which comprised and joined the territory and functions of three former independent agencies, a levee district, a drainage district, and a mutual water company. The legislature expressly declared that all of the improvements of each former district were uniformly advantageous and beneficial to all the lands of the new district. The refunding bonds were issued pursuant to an amendment of 1925 (Stats. 1925, p. 637), for the purpose of redeeming the bonds of all three districts. The power of the legislature to authorize the imposition of the obligation upon the larger district to pay for improvements constructed within the smaller districts was upheld. The respondents there contended that in fixing the boundaries of the smaller district it must have been determined that the lands included therein only and no others were benefited by the works there constructed. But the contention was considered unavailing. The court said: "It may well happen that by the extension of the original plans lands which would not be benefited by the original construction work would derive a benefit not only from the additional improvement but from the original improvement as well." It is true that in that case the legislative declaration of benefit was express, but it is seen that the same effect should obtain where, as here, from the nature of the enactment, the implication that the legislature so found is unmistakable and unavoidable.

The statement in the case of *Van de Water* v. *Pridham*, 33 Cal. App. 252, 261, that there is a radical difference between the purposes of the Drainage Act and the Flood Control Act, the purpose of the former being to dispose of the water as an injurious element and of the latter to conserve it as a beneficial agent, is not necessarily inconsistent with the conclusions herein expressed. It is not difficult to perceive that the object to be attained by the legislation here questioned, namely, the combination of the functions

of drainage and flood control to the end that drai
waters may as well be conserved through the joint facil
of the drainage and flood control districts, is well w
the legislative power.

The peremptory writ is denied and the alternative
is discharged.

SHENK,

We concur:

LANGDON, *J.*
CURTIS, *J.*
WASTE, *C. J.*
SEAWELL, *J.*

(7537)

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CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1938

No. 368

THE CITY OF LOS ANGELES, a municipal corporation, and RAY L. CHESEBRO,

Appellants,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES AS THE BOARD OF SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; JOHN ANSON FORD, LELAND M. FORD, HERBERT C. LEGG, ROGER W. JESSUP AND GORDON L. McDONOUGH, as Members of and Constituting the Board of Supervisors of the County of Los Angeles, and *ex officio* the Board of Supervisors of the Los Angeles County Flood Control District,

Appellees.

APPELLANTS' BRIEF OPPOSING APPELLEES' MOTION TO DISMISS APPEAL.

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(Continued on Inside Cover.)

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1938

No. .....

THE CITY OF LOS ANGELES, a municipal corporation, and RAY L. CHESEBRO,

Appellants,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES AS THE BOARD OF SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; JOHN ANSON FORD, LELAND M. FORD, HERBERT C. LEGG, ROGER W. JESSUP AND GORDON L. McDONOUGH, as Members of and Constituting the Board of Supervisors of the County of Los Angeles, and *ex officio* the Board of Supervisors of the Los Angeles County Flood Control District,

Appellees.

APPELLANTS' BRIEF OPPOSING APPELLEES' MOTION TO DISMISS APPEAL.

FOREWORD.

Appellees have included in their statement opposing the jurisdiction of this Honorable Court* [R. 116] a motion

*References are to pages of original record.

"to dismiss the appeal or for an order affirming the judgment of the Supreme Court of the State of California." Appellees base their motion upon the following grounds:

1. As to appellant City of Los Angeles, no federal question is involved.
2. Federal questions are foreclosed by previous decisions.
3. Questions involved are too unsubstantial to justify Supreme Court in taking jurisdiction.
4. Determination of nonfederal questions by California Supreme Court sufficient to support its decision.

It is to be noted that the first ground of appellees' motion relates only to the appeal of the City of Los Angeles and not to that of the appellant Ray L. Chesebro.

STATEMENT OF THE CASE.

The case in general involves the validity of the transfer to the Los Angeles County Flood Control District of the works and improvements of certain special assessment drainage districts and the assumption by the Los Angeles County Flood Control District of the outstanding indebtedness of these special assessment drainage districts, without providing an opportunity for the owners of the real property within the Flood Control District to be heard on the question of whether such transfer and assumption of liability would be of special benefit to the lands within the Flood Control District, the Los Angeles County Flood Control District being also a special assessment district. The cause was submitted upon a petition for a writ of mandate and a demurrer thereto. The questions involved are solely questions of law.

1. The Formation of the Special Assessment Districts.

In 1915 the State Legislature created the Los Angeles County Flood Control District (Stats. 1915, p. 1502). The Supreme Court of the State of California, in *Los Angeles County Flood Control District v. Hamilton*, 177 Cal. 119, declared the district to be a special assessment district as distinguished from a taxing district. The area of the Los Angeles County Flood Control District encompasses almost the entire County of Los Angeles, which has an area of approximately 4,000 square miles. The act creating the district is known as the Los Angeles County Flood Control District Act and its pertinent provisions, as amended to date are set forth in the appendix to this brief. Its object and purpose, as set forth in section 2, may generally be described as being to provide for the control and conservation of flood, storm and other waste waters of the district.

Subsequent to the formation of the Los Angeles County Flood Control District the Board of Supervisors formed eleven special assessment drainage districts of limited areas within the territory of the Los Angeles County Flood Control District. Two of these drainage districts were formed under the provisions of the Statutes of 1903, page 354, and seven of them were organized under the Drainage District Improvement Act of 1919 (Stats. 1919, p. 731). These two statutes, the first of which was superseded by the second, authorize county boards of supervisors, upon petition of landowners, to form drainage districts, after giving proper notice and holding hearings thereon. The validity of Drainage District No. 1 was attacked in *Van de Water v. Pridham*, 33 Cal. App. 253, on the ground that the Statutes of 1903, page 354, authorizing the formation of drainage districts upon petition of landowners, no

longer applied to the territory embraced within the Los Angeles County Flood Control District; however, the validity of the formation of Drainage District No. 1 was upheld and the statute declared to be still operative within the territory of the Los Angeles County Flood Control District on the theory that drainage districts formed under the statute serve a purpose different from that of the Flood Control District and take care of the peculiar needs of a local area within the Flood Control District.

2. The Transfer of the Drainage Districts' Works to the Los Angeles County Flood Control District.

In 1937 the legislature amended the Los Angeles County Flood Control District Act (Stats. 1915, p. 1502) by a statute adding section 13½ to the Act (Stats, 1937, p. 1763). Section 13½ provides that:

> "The board of supervisors of said Los Angeles County Flood Control District, by a four-fifths vote, may accept on behalf of said district a transfer of and conveyance of all, but not less than all, storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of the flood control district and within any of the following described classes, to-wit: * * *"

Then follows a description of four classes of structures which may be summarized as being those constructed and maintained under the authority of the county board of supervisors; those constructed by or for the County, any drainage district within the county, or the Los Angeles

Flood Control District; those constructed prior to January 1, 1937, under the 1903 or 1919 drainage district acts (Stats. 1903, p. 354; Stats. 1919, p. 731); those within any municipality within the county whose governing body has transferred the drainage works of the municipality to the Flood Control District.

Section 13½ further provides that upon any such transfer being made the Flood Control District "shall thereupon be and become liable for the payment of the principal upon the bonds of such drainage improvement districts maturing subsequent to the date of such conveyance and upon the indebtedness of such drainage improvement districts represented by interest coupons maturing subsequent to such date of transfer"; that special assessments shall be levied on lands within the Flood Control District to meet these obligations; and that the future maintenance of these structures so transferred shall be the obligation of the Flood Control District, authority being also given to levy special assessments throughout the Flood Control District for this latter purpose.

On December 1, 1937, the Board of Supervisors of the County of Los Angeles transferred the structures of these eleven drainage districts to the Los Angeles County Flood Control District, as set forth in the resolution incorporated in the petition for the writ of mandate as Exhibit "A" [R. 9]. Although appellees sought to justify their action under the asserted authority of other sections of the Los Angeles County Flood Control Act (Stats. 1915, p. 1502), the Supreme Court of the State

of California, in its decision, held that "the petition disclosed an intent on the part of the Board of Supervisors to proceed pursuant to the power vested in it by said section 13½." [R. 82.] It therefore follows that if the transfer is valid the outstanding obligations of the drainage districts and the future maintenance of their works are assumed by the Los Angeles County Flood Control District by operation of law.

3. Appellants' Contentions.

The substance of appellants' contentions is this: That while the Los Angeles County Flood Control District was created by the legislature and the question of special benefit to the lands within the district was thereby determined by that body at the time of the adoption of the act creating the district, yet this does not permit the legislature to later amend the act so as to grant to a county board of supervisors, clothed only with *quasi-judicial* and administrative powers in the matter, unlimited discretionary power to acquire on behalf of the district, various types of structures, including those of other special assessment districts created by the board of supervisors upon petition of property owners within the district, the validity of whose organization is based upon the fact that they serve a purpose different from that of the Flood Control District and are of benefit only to limited areas within the Flood Control District, without the legislature providing for notice and an opportunity for property owners within the Flood Control District to be heard upon whether a transfer of

these structures to the Flood Control District will be of special benefit to the lands within the Flood Control District.

4. Appellees' Contentions.

Appellees contend that the granting of discretionary power to the county board of supervisors to acquire these classes of structures on behalf of the Los Angeles County Flood Control District is but an additional grant of power to the governing body of the Flood Control District which the legislature itself created and that therefore it is not essential that provision be made for notice and an opportunity for property owners within the Flood Control District to be heard before such structures may be transferred to the Flood Control District; and that by granting such discretionary power to the board of supervisors the legislature impliedly determined that structures of the classes mentioned in the section, if acquired by the Flood Control District, would be of special benefit to it. Appellees further contend that section 13 of article XI of the Constitution of the State of California gives the legislature plenary power over drainage districts and that the enactment of section 13½ of the Los Angeles County Flood Control District Act is but the exercise of that plenary power.

ARGUMENT.

This brief being one in opposition to appellees' motion to dismiss the case, appellants will address their argument first to the question of whether a federal question is involved with reference to the appellant City of Los Angeles, and then, in the order indicated, to the question of whether the issues presented are foreclosed by previous decisions of this Honorable Court, or are of a substantial nature, and whether the decision of the Supreme Court of California may be upheld on nonfederal grounds.

POINT I.

The Rights of the City of Los Angeles Involved in This Case Are Within the Protection of the Constitution of the United States and a Federal Question Is Therefore Presented.

In the petition for writ of mandate [R. 1] it was alleged, in paragraph VII [R. 6], that the levy of special assessments by the Flood Control District to meet the obligations of the drainage districts, whose works were transferred to the Flood Control District, will be without regard to the accrual of benefits to the lands assessed and will deprive petitioners of their property without due process of law and deny them the equal protection of the laws in violation of the provisions of article V and article XIV of the Amendments to the Constitution of the United States and section 13 of article I of the Constitution of the State of California. The Supreme Court of California, in its decision [R. 81], recognized the claim of petitioners that the threatened levy of the special assessments under the statute complained of would constitute a "denial of due process and the equal protection

of the laws enjoined by the state and federal constitutions," [R. 83] but proceeded to hold that special assessments so levied would not constitute a denial of due process and the equal protection of the laws.

In recognizing the right of the City of Los Angeles, in the case at bar, to assert rights protected by the Constitution of the United States, the Supreme Court of California was but following the rule laid down at an early date in the judicial history of California in *Grogan v. City of San Francisco* (1861), 18 Cal. 590. In that case the Supreme Court of California held that the legislature was without power to divest the City of San Francisco of rights granted to it by an earlier statute conveying certain property to the city for its use and occupation for a period of ninety-nine years, as it would be violative of rights protected by the Constitution of the United States. It was there said, commencing at page 612:

> "* * * The estate having vested in the city, ceased to be subject to the legislation of the State, except to the same extent that all property is thus subject. It could not be afterwards divested by the State, or by any proceedings instituted by her direction. '* * * Nor is there any difference in the inviolability of the contract between a grant of property to an individual and a like grant to a municipal corporation.' * * * The authorities are all to the same purport. A legislative grant is an executed contract, and as such is within the clause of the Constitution of the United States which prohibits the States from passing any law impairing the obligation of contracts. This was expressly decided by the Supreme Court of the United States in *Fletcher v. Peck,* 6 Cranch. 137. It cannot therefore be de-

stroyed, and the estate be divested by any subsequen legislative enactment. And though a municipal cor poration is the creature of the Legislature, yet whe the State enters into a contract with it, the subordi nate relation ceases, and that equality arises whic exists between all contracting parties. And howeve great the control of the Legislature over the corpor ation, it can be exercised only in subordination to th principle which secures the inviolability of contract* * *

"The cases of *Hart v. Burnett,* 15 Cal. 530, an *Payne v. Treadwell,* 16 Cal. 222, cited by the coun sel of the appellant, do not conflict with the view we have expressed as to the authority of the Legis lature over the property of a municipal corporation They both treat of lands held by the city of Sa Francisco as successor of the former pueblo, and o the power of the Legislature to validate a grant o such lands previously made by the act of the city Those lands were held by the pueblo, and the city a its successor, in trust for public municipal purposes and the trust was subject to the direction, supervi sion, and control of the Government. The cases cite have no application to a case like the present, when the Legislature has undertaken to divest property which is not held upon any such trusts, without th city's previous consent, or the city's subsequent ac ceptance of its act."

It is thus seen that in California the rule is clearl laid down that while the legislature may control municipal ties in so far as they act as agents of the state in the ad ministration of public affairs, yet as regards propert rights of municipalities vested in them for their own cor

porate advantage they are of such nature as to be within the protection of the Constitution of the United States and not subject to invasion by the legislature in a manner prohibited thereby.

In *City of Beverly Hills v. City of Los Angeles* (1917), 175 Cal. 311, the Supreme Court of California had under consideration the right of the City of Los Angeles to maintain water mains in the streets within the limits of the city of Beverly Hills under an act of the Legislature (Stats. 1911, p. 852) which provided "That there is granted to every municipal corporation of the State of California the right to construct, operate and maintain water and gas mains * * * along or upon any road, street * * *." In discussing the nature of the right acquired by the City of Los Angeles, it was said, at page 314:

> "The grant resulting from defendant's acceptance of the state's offer constituted a contract, the property right in which is protected by the federal Constitution * * *. No doubt exists as to the power of the state to make the grant, which, when accepted as we have seen, constituted an inviolable contract * * * ."

The same rule (including the exception as to governmental affairs) is recognized in Massachusetts. In *Proprietors of Mt. Hope Cemetery v. City of Boston* (1893), 158 Mass. 509, it is stated, at page 511:

> "Over property which a city or town has acquired and holds exclusively for purposes deemed strictly public,—that is, which the city or town holds merely as an agency of the state government for the per-

formance of the strictly public duties devolved upon it,—the legislature may exercise a control, to the extent of requiring the city or town, without receiving compensation therefor, to transfer such property to some other agency of the government, appointed to perform similar duties, and to be used for similar purposes, or perhaps for other purposes strictly public in their character. * * * By a pretty general concurrence of opinion, however, this legislative power of control is not universal, and does not extend to property acquired by a city or town for special purposes, not deemed strictly and exclusively public and political, but in respect to which a city or town is deemed rather to have a right of private ownership, of which it cannot be deprived against its will, save by the right of eminent domain, with payment of compensation."

In *City of Boston v. Jackson* (1922), 260 U. S. 309, it was pointed out that where the courts of a state assume that a municipality has rights protected by the Federal Constitution, this Honorable Court will assume likewise, reserving to itself, however, the power to decline to follow the state court. In that case, it was said, at page 316:

"In this conclusion, we assume, as did the supreme judicial court, that the state may confer on one of its subdivisions, like a city or town, the private proprietary capacity by which it may acquire contract or property rights protected by the Federal Constitution against subsequent impairment by its creator, the state."

In *Railroad Commission of California v. Los Angeles Railway Corp.* (1929) 280 U. S. 145, this court had under consideration the question of whether the City of Los Angeles had power to enter into a contract fixing maximum fares in street railway franchises as distinguished from the mere regulatory power to fix fares which might be changed or abrogated under the police power of the state without violating the contract rights of the city. It was there pointed out, at page 152, that:

> "This court is bound by the decisions of the highest courts of the states as to the powers of their municipalities. *Georgia R. & Power Co. v. Decatur*, 262 U. S. 432, 438, 67 L. Ed. 1065, 1073, 43 Sup. Ct. Rep. 613."

In *Georgia Railway & Power Co. v. Town of Decatur* (1923), 262 U. S. 432, a similar question as to the nature of a provision in a street railway franchise fixing maximum fares was presented. It was said in that case, at pages 437 and 438:

> "* * * This contract has been before the supreme court of Georgia in the course of litigation on three distinct occasions: 149 Ga. 1, 5 A. L. R. 1, P. U. R. 1919D, 546, 98 S. E. 696; 152 Ga. 143, 108 S. E. 615; and (the instant case) 153 Ga. 329, 111 S. E. 911. * * * This conclusion, involving, as it does, a construction of the state Constitution and laws and powers of state municipalities, is controlling upon this court, as it has decided many times. * * *
>
> "On the other hand, in deciding the constitutional questions presented, this court will determine for itself whether there is, in fact, a contract, and, if so, the extent of its binding obligations; but will lean to an agreement with the state court. * * * And

considering the question in this light, we see no reason to differ with that court in its view of the validity and binding quality of the contract."

Appellees reply upon *City of Trenton v. State of New Jersey* (1923), 262 U. S. 182, for the proposition that the rights and property of municipalities are subject to state control exclusively. In that case, however, the Court of Errors and Appeals of New Jersey held (*State v. City of Trenton*, 97 N. J. L. 241) that the city of Trenton could not object that its rights were unconstitutionally invaded, it being said, at page 246 of 241 N. J. L. Reports:

> "But the logical, and as it seems to us conclusive, answer to the defendants' contention is that they are not only subsidiary political divisions of the state, exercising their delegated powers, presumably and exclusively in the public interest, but *ex necessitate* their business and property are thereby expressly affected with a public interest; and under well-settled rules of law become thereby subject to the exercise of the police power when exerted by the state in behalf of the general body politic."

This court, in pointing out the law of New Jersey upon the subject, said, at page 187 of 262 U. S. Reports:

> "In New Jersey it has been held that, within the limits prescribed by the state Constitution, the legislature may delegate to municipalities such portion of political power as they may deem expedient, withholding other powers, and may withdraw any part of that which has been delegated. Van Cleve v. Passaic Valley Sewerage Comrs., 71 N. J. L. 183, 198, 58 Atl. 571."

In holding, therefore, that the City of Trenton had no rights involved which were within the protection of the 14th Amendment to the Constitution of the United States, this court was but following its well-settled rule of adhering to the decisions of the highest court of a state declaring the rights of municipalities of that state.

Appellees cite *Hunter v. City of Pittsburg* (1907), 207 U. S. 161, which involved the validity of a statute under which the cities of Pittsburgh and Allegheny were consolidated into one municipal corporation. Taxpayers of the City of Allegheny attacked the consolidation upon "the novel proposition that there is a contract between the citizens and taxpayers of a municipal corporation and the corporation itself, that the citizens and taxpayers shall be taxed only for the uses of that corporation, and shall not be taxed for the uses of any like corporation with which it may be consolidated" (p. 177), and that plaintiffs were deprived of their property without due process of law by subjecting them to the burden of the additional taxation which would result from the consolidation. It was in connection with this issue that this court pointed out that a state may, at its pleasure, modify or withdraw all powers of a governmental nature from municipal corporations; however, this court pointed out that this power of the legislature appears to extend only to activities of municipal corporations when acting in a governmental capacity, it being said (at page 179):

> "It will be observed that, in describing the absolute power of the state over the property of municipal corporations, we have not extended it beyond the property held and used for governmental purposes. Such corporations are sometimes authorized to hold and do hold property for the same purposes that

> property is held by private corporations or individuals. * * * If the distinction is recognized it suggests the question whether property of a municipal corporation owned in its private and proprietary capacity may be taken from it against its will and without compensation. Mr. Dillon says truly that the question has never arisen directly for adjudication in this court. But it and the distinction upon which it is based have several times been noticed."

It was pointed out that the City of Allegheny had made no allegation that it had been deprived of its property without due process of law nor was it apparent from the facts that the city was in a position to make such a contention. As to the plaintiff taxpayers, it was held that

> "Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences."

It is therefore apparent that in so far as the dictum of this case is concerned it tends to support the contentions of appellants rather than those of appellees.

City of New Orleans v. New Orleans Water Works Co. (1891), 142 U. S. 79, is also referred to by appellees. In that case the charter of the water works company, granted in 1877, provided that the property of the company should be exempt from taxation in consid-

eration of furnishing the City of New Orleans with water free of charge. The purported exemption from taxation was void and the city sued for taxes due and the water company sued for the value of the water furnished the city. On appeal, the Supreme Court of Louisiana modified the judgment so that the charge for water offset the amount of taxes due the city. Later an Act of the Legislature was adopted, in 1884, providing that the city should pay for water supplied to it during any year for which taxes had been levied for municipal purposes, and, pursuant to such statute, the city entered into a contract with the water company. Certain taxpayers brought suit to enjoin making any appropriation under the contract on the ground that the Act of the Legislature was unconstitutional and therefore void. In dismissing the case, it was said, at page 83:

> "* * * Was there a federal question involved in this case? None such appears upon the face of the bill, the basis of which is a conflict between the Act of 1884, and the ordinance and contract thereunder, and the constitution of the State. Four clauses of the constitution are cited, all of which this Act is alleged to violate; but in none of them is there a suggestion of a conflict with the federal constitution or laws."

On the question of whether a municipality may have rights protected by the Federal Constitution, that case seems to support appellants' position rather than that of appellees. In pointing out that the original contract created by the charter of the water company was void and had been repudiated by the city, this court held in effect that the subject-matter thereof related to the capacity of the city as an agency of the state and was

therefore subject to modification by the legislature, but that private or proprietary rights of a city may be entitled to protection under the Federal Constitution, it being said, in this regard, at page 91:

> "* * * But further citations of authorities upon this point are unnecessary; they are full and conclusive to the point that the municipality, being a mere agent of the State, stands in its governmental or public character in no contract relation with its sovereign, at whose pleasure its charter may be amended, changed or revoked, without the impairment of any constitutional obligation, *while with respect to its private or proprietary rights and interests it may be entitled to the constitutional protection.*" (Italics ours.)

The case of *Barnes v. District of Columbia* (1876), 91 U. S. 540, cited by appellees does not involve a consideration of any rights of a municipality protected by the Federal Constitution. The question there involved was the liability of the District of Columbia as a municipal corporation for injuries resulting from the dangerous and defective condition of its streets. The discussion of that case centered around whether the source of the power of appointment of municipal officers had any effect upon the liability of the municipality for their negligence in performing their official duties.

City of Tulsa v. Oklahoma Natural Gas Co. (1925), 4 Fed. (2d) 399, a decision of the District Court of the Eastern District of Oklahoma, cited by appellees, is a case wherein the City of Tulsa had granted a franchise to the gas company, with a stipulation as to the rate to be charged the city and its inhabitants. Subsequently the state legislature passed a law transferring to the Cor-

poration Commission jurisdiction over public utilities and the regulation of rates, and the Corporation Commission raised the rates. The City of Tulsa argued that the rate provisions of the franchise constituted an inviolable contract but the court held that the city had no rights protected by the Federal Constitution, citing such cases as *City of Trenton v. State of New Jersey (supra)*, 262 U. S. 182. The question presented in that case was not whether the gas company was compelled to furnish gas at the rates specified in order to retain its franchise. The question was whether the rate agreed on between the gas company and its consumers was subject to modification by the state in the exercise of its police power. It seems to be well settled that contracts for public service are made with the implied provision that the rate agreed on is subject to change by the state in the exercise of the police power. (See Annotation to *Railroad Commission of California v. Los Angeles Railway Corporation*, in 74 U. S. Rep., Law. Ed. 234, 238, 305, 316.) It would therefore appear that the decision of the District Court must of necessity have been the same even if the suit had been brought by a private party. Moreover, the District Court was considering the question in an original proceeding and did not have before it any decision of the state courts holding that the City of Tulsa had rights which were of such nature as to be within the protection of the Federal Constitution, as in the case at bar, and in *City of Boston v. Jackson (supra)*, 260 U. S. 309.

Appellees cite *Bulkeley v. Williams* (1896), 68 Conn. 131, wherein the legislature shifted the cost of a bridge and highway from the state to certain municipalities. "In behalf of the town it is contended that it cannot thus be compelled to contribute, at the dictation of officials not of

its own choosing, to the cost of maintaining a highway which is wholly outside of its territorial bounds" (p. 148). In disposing of this contention, it was said, at page 148:

> "* * * As against legislation of this character, American courts generally hold that no plea can be set up of a right of local self-government, implied in the nature of our institutions. * * * No right, as against a state, to the equal protection of the laws, is secured to its municipal corporations by this amendment, which can limit in any way legislation to charge them with public obligations. * * * The town can found no claim, under the Constitution of the United States, any more than under that of Connecticut, to such right of local self-government as precludes the general assembly from exacting this payment, notwithstanding the demand comes from another municipal corporation, the bridge district, in choosing whose members or directing whose affairs it has had no share."

It is thus seen that the Supreme Court of Connecticut was speaking of a public obligation placed upon the town as an arm of the state. Moreover, whatever the courts of Connecticut may say as to the rights conferred on municipalities of that state, the same are to be disregarded if in conflict with the decisions of California courts, in so far as the case at bar is concerned.

City of St. Louis v. Shields (1873), 52 Mo. 351, cited by appellees, is also a case wherein a state court determined the nature of the rights of a municipality in the subject-matter of the action, namely, subsequent legislation withdrawing from the City of St. Louis the right to collect wharfage, which was held to be merely a privilege granted to the city which the legislature could withdraw at any time.

The case of *Police Jury v. Shreveport* (1850), 5 La. Ann. 661, is likewise a case where a state court was, at most, construing the nature of rights conferred upon the municipalities of the state as against the contention that the withdrawal of an exclusive ferry franchise from the City of Shreveport constituted an impairment of a contract under section 1 of the Tenth Amendment. Again, it is to be noted that the decisions of the courts of Louisiana defining the rights of municipalities of that state have no bearing upon the case at bar as it is for the courts of California to define the rights of municipalities existing under the laws of California.

Appellees contend that as between a municipality and the state their relations are matters of local law not subject to review by this court, citing *City of Pawhuska v. Pawhuska Oil & Gas Co.* (1919), 250 U. S. 394. In that case, as in the case of *City of Trenton v. State of New Jersey (supra)*, 262 U. S. 182, the highest court of the state denied the existence of the right which the City of Pawhuska sought to enforce, namely, the right of the city to regulate the charges made for service by public utilities using the city streets under franchise unaffected by a subsequent transfer of that right to the State Corporation Commission. "Or, stating it in another way, the contention of the city was and is that the authority to regulate the rates and service, which concededly was reserved at the time the franchise was granted, was irrevocably delegated to the city by the Constitution and laws of the state, and therefore that the exertion of that authority by any other state agency, even though in conformity with a later enactment of the legislature, operated as an impairment of the franchise contract." The State Supreme Court decided adversely to such contention, and, in dismissing the case, this court pointed out (p. 397):

(D) WITH RESPECT TO THE TRANSFER OF THE OBLIGATIONS AND COST OF MAINTENANCE OF THE DRAINAGE DISTRICTS TO THE FLOOD CONTROL DISTRICT, THE BOUNDARIES OF THE DISTRICT TO BE ASSESSED WERE NOT DETERMINED BY THE LEGISLATURE BUT BY A LOCAL ADMINISTRATIVE BOARD.

The legislature did not *command* the Board of Supervisors to transfer drainage districts to the Flood Control District. The legislature merely authorized such transfers to be made if the Board of Supervisors so desired. The effect of this is to place in the discretion of the Board of Supervisors the power to limit the assessments of the special assessment drainage districts to lands within the boundaries of the respective drainage districts theretofore established or to spread such assessments over the entire area of the Flood Control District. Under these circumstances it may not be logically argued that the legislature has determined what lands are to be assessed for the improvements of the respective drainage districts and consequently it may not be argued that by *authorizing* the transfer to be made the legislature has determined what lands will be benefited by the drainage district improvements.

It seems to be clear that where the legislature authorizes a local board to do a particular thing, in its discretion, or by a vote of the electors of a district, action taken pursuant to such authorization is not an act on the part of the legislature.

The principle appears to be well established that when the legislature merely authorizes an act to be done the doing of such act is not by the legislature but by the agency upon whom the authority to act has been conferred.

In *Swanson v. Therrell* (1933), 112 Fla. 474, a statue was held void for failing to provide for proper notice and hearing on the question of benefits to lands proposed to be assessed by a port district. The legislature sought to readjust special assessments by changing them in part from a basis of general benefit to the entire district as a whole, to an apportionable special benefit assessment against the properties in the district severally. In the statute the legislature expressly determined that certain lands were benefited specially in addition to the general benefits received by all lands within the district. However, the statute provided that it should "not become effective until the same shall have been approved or ratified by a majority of the qualified electors * * * of the Broward County Port District * * * if twenty-five per cent (25%) of the qualified voters * * * shall petition * * * for such an election within fifteen (15) days after the passage of this Act"; and that if no such petition is filed within that time "this Act shall become a law and be operative at the expiration of said fifteen (15) days."

In holding that there had been no legislative determination of benefits, in spite of the express declaration to such effect, it was said, commencing at page 478:

> "An act of the Legislature undertaking to make a legislative determination of benefits to properties situated within a special taxing district, whether in the aggregate, or severally, as to affected properties, is in its essence such a statute as cannot be constitutionally made contingent on the results of a referendum election for its ratification as an ordinary legislative act can be on matters of general legislative concern, as has been upheld in State ex rel. Cheyney v. Sammons, 62 Fla. 303, 57 So. 196.

"The reason for this is obvious. Affected property owners of a special taxing district possess the constitutional right to have the amount of special benefits, and the individual apportionment thereof, determined by the judgment of the Legislature itself on this question, which is a determinable question of fact. In lieu of such direct determination by the Legislature itself, a tribunal of some sort must be provided for or set up by the Legislature, and vested with power to accord a full hearing to property owners on all the elements of benefit required to be considered by the law-making power, before a valid and binding apportionment and assessment of special benefits can be constitutionally accomplished and made conclusive on the property owner. Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 112, 17 S. Ct. 56, 41 L. Ed. 369. * * *

"A legislative determination of special benefits to specially assessed properties situate in a special taxing district is essentially, from the very nature of the legislative function involved in a matter of that kind, a proposition which the Legislature alone is empowered to act upon. Being an ascertainment of a fact, the ascertainment of which is required to be made by law in order to constitute due process (where notice and opportunity to be heard on the question is not otherwise provided for), the effectiveness of such ascertainment when legislatively made cannot be made to depend upon the happening of a contingency, such as the favorable vote of a referendum election on the question of whether or not the act including the legislative ascertainment shall become effective at all.

"To say that an act of the Legislature relating to a duty required to be performed, or a power required to be exercised, according to the judgment of the Legislature alone as a matter exclusively within the

> Legislature's sovereign power, is capable of being made to become effective only upon its subsequent approval by the ratifying vote of the electors of a particular district with relation to which the legislative determination is required to be made, is to completely ignore the constitutional nature and character of the legislative function which is being exercised when a legislative act of this character is passed."

In *Redman v. Kyle* (1918), 76 Fla. 79, it was held that a statute creating a drainage district was void because it gave the supervisors of the district discretionary power to levy assessments up to fifty cents an acre for preliminary expenses without providing any opportunity for property owners to be heard on the merits of the assessment. In holding that a demurrer to a bill seeking to enjoin an assessment for preliminary expenses of the district was improperly sustained, it was said, commencing at page 81:

> "* * * This district was established directly by the Legislature by chapter 7430, Acts of 1917, and its territorial boundaries therein definitely prescribed, embracing land lying within the counties of Broward and Dade. A governing body, consisting of three members designated as a board of supervisors, was created, and its members specifically named in and by the act; * * * said board, immediately after the organization of the said district, without notice to the owners of land within the district, levied a uniform tax of 25 cents per acre upon each acre of land within the district, under the provision of section 7 of said act, which prescribes that the board of supervisors of the district, as soon as organized, shall levy a uniform tax, not exceeding 50 cents per acre, upon each acre of land within the district, which tax shall become a lien upon the land upon which it is assessed from the date of its assessment. * * *

at page 84:

"There is no provision in the act as to the method or manner in which the amount of such preliminary expenses are, even approximately, to be ascertained by the supervisors. Upon the assumption that the assessment or tax provided for in section 7 of the act is legal and valid, there is ample authority, as far as the act is concerned, for the supervisors to fix such tax at any amount up to 50 cents per acre on the lands within said district, and this they may do without any inquiry or investigation, arbitrarily and in secret, if they choose, without notice to any person or affording an opportunity for a hearing of the landowners in the district, who may be required to pay these expenses, and who, it is to be presumed, are not only materially and vitally interested in the result of the drainage and reclamation plan to be adopted and followed, but who are also equally interested in seeing that these preliminary expenses are no greater than the necessities of the case require.
* * *

"It is not here disputed that the Legislature may impose a special assessment and fix the rate thereof on lands in a duly established drainage district by the valid exercise of its legislative power, without giving notice to, or affording an opportunity to be heard by, the owners of the land upon which such assessment is imposed. But it was said in Lainhart v. Catts, 73 Fla. 735, 75 South. 47, text 55:

" 'There is a wide difference between a special tax or assessment for local improvements prescribed by the legislative body, having full authority over the subject, and one dependent upon the judgment and actions of bodies or instrumentalities acting under delegated powers.'

"Where, as in the present case, the tax is levied upon land at a rate not specifically fixed by the legislative body, but which rate is fixed by a board of supervisors, dependent upon the amount to be raised for the stated purposes, involving, at least, an estimate and an exercise of judgment by such board, it would be a dangerous doctrine to hold that absolute power resides in such a tribunal, to levy a tax in any such amount as it might choose, even if within restricted limits, without giving notice to the owner of such land and affording him an opportunity of being heard as to the necessity of raising the amount determined upon by such body. It would be a power which could, and indeed is likely to, be greatly abused, and the general principles of law applicable to such bodies are opposed to the exercise of any such powers. In the absence of a provision for the enforcement of the assessment in the nature of a judicial proceeding, in which notice is given to the property owner and a full and fair opportunity afforded him to be heard upon the merits of the assessment, it is manifestly proper that before the tax is levied and becomes a lien upon the land, as a result of the determination of some body or instrumentality acting under delegated powers, those who are to pay the tax or who own land against which the assessment is to be enforced should have notice of the tax to be imposed and have an opportunity of being heard as to the amount necessary to be raised for the purposes stated in the statute. * * *"

At page 87:

"The case of Lainhart v. Catts, 73 Fla. 735, 75 South. 47, also cited by appellees as being opposed to appellant's contention, is not in point, as the tax or assessment considered in that case was fixed at a

definite, stated amount by the Legislature, leaving nothing to be determined by any subordinate body acting under delegated power, before the tax should be levied. In the instant case, the supervisors are to determine, not only the aggregate amount to be raised for the preliminary expenses to be incurred under section 7 of the act, but, in making up such amount, they are to determine the various amounts to be expended for the several items mentioned as constituting such preliminary expenses, and to raise such amounts may impose such rate of taxation not to exceed 50 cents per acre as they may choose. Under such circumstances, it is held in Londoner v. City and County of Denver, 210 U. S. 373, 28 Sup. Ct. 708, 52 L. Ed. 1103, that:

"'Where the Legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessments and apportionment, due process of law requires that, at some stage of the proceedings before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice.'"

In *Flynn v. Chiappari* (1923), 191 Cal. 139, the court had under consideration a procedural street improvement ordinance of San Francisco. San Francisco is a consolidated city and county government, the only one of its kind in the state. It is governed by a board of supervisors. The ordinance in question provides for street improvements to be initiated by the board of public works' declaring the expediency of a proposed improvement, and, after notice and a hearing thereon, recommending the

same to the board of supervisors. The ordinance provides that the expense shall be borne by a district, if, in the opinion of the board of public works, the improvement is of more than local or ordinary public benefit, and that the district shall be described in the notice. Otherwise, the expense shall be met by assessments levied on a "front foot" basis, except that if there be an improvement of such nature that these two methods are not sufficient "to authorize the board of public works to make an assessment to pay for the expenses thereof, then said board shall, before it passes a resolution of its intention to recommend the ordering of said work or improvement, establish by resolution a method by means of which such assessment shall be made." The ordinance does not require that notice and a hearing be given to property owners by the board of public works in adopting a method of assessment. In holding that this provision for the adoption of a method of assessment by the board of public works was void for want of provision for notice and hearing, the court referred to the rule that notice is not required where the legislature itself determines the proprty to be benefited or provides a rule by which it is to be determined by a body exercising delegated legislative power, but pointed out that (p. 146):

> "* * * It is also true that for the purposes of the instant case the board of supervisors is the legislature. (*Larson v. San Francisco, supra.*) But the supervisors in this case did not determine either the property to be charged or the benefits to be charged against it, nor did they fix any rules by which these were to be determined. These were determined by

the board of public works, and never even reported to the supervisors.

"Where, as here, the determination of the property to be charged and the benefits to accrue thereto is committed to an administrative board, due process requires that the property owners affected thereby shall be given adequate notice and an opportunity to be heard upon both these questions. (*Brooks v. City of Oakland*, 160 Cal. 423 [117 Pac. 433]; *People v. Van Nuys Lighting Dist.*, 173 Cal. 792 [Ann. Cas. 1918D, 255, 162 Pac. 97].)"

The same idea was expressed in *Miller & Lux v. Board of Supervisors* (1922), 189 Cal. 254 wherein it was pointed out that, where the legislature does not describe the district or decide that any particular land will be benefited, it is necessary to give a hearing upon the question of benefits and that acts performed without such a hearing being had could not be validated by subsequent legislation in which the findings of a local board are adopted by the legislature, because (p. 277):

"* * * In the first place the conclusive presumption indulged in by the courts to the effect that the legislature had duly considered the benefits to be derived by the lands included within the district is hardly applicable when the legislature expressly adopts the findings of the board of supervisors as to benefits."

Attention is also respectfully called to the case of *State v. McGuire* (1909), 109 Minn. 88, wherein it is said, commencing at page 91:

"We are of opinion that the statute, in so far as it attempts to clothe the board of commissioners with

ex parte power and authority to enlarge, by widening or deepening, a ditch theretofore constructed, is unconstitutional and void by reason of its failure to provide some kind of notice to those who are required by the statute to defray the expense of the improvement, or afford them an opportunity at some stage of the proceedings to be heard upon all questions necessary to be determined in order to justify the proposed work. It is clear that the original proceeding could not be authorized by the Legislature without some provision for notice or opportunity to be heard upon these questions (28 Cyc. 979; Hamilton on Special Assessments, 141); and it is equally clear that the enlargement of a ditch already constructed, either by widening or deepening it, would, for all practical purposes, constitute a new ditch, depending, perhaps, upon the extent of the enlargement, * * *

"If the statute under consideration authorized ordinary repairs only, such as removing obstructions and accumulations of foreign substances in the ditch, we would follow the rule of the Iowa court, and some of the other states, to the effect that provision for notice to the owners of adjoining property is not essential to the validity of the statute. * * *

"* * * And, as suggested, if this statute were so limited, notice would be held unnecessary. But it is not so limited. On the contrary, the statute not only authorizes repairs, but grants to the board the further power to enlarge the ditch by widening its banks or deepening its channel. And, respecting this additional power, it contains no limitation respecting the extent to which the board may go. Under its authority an existing ditch may be widened or deepened one, two, or more feet, depending upon the

> arbitrary action of the county board, guided in the main, perhaps, by recommendations of their engineer. Clearly this should not be authorized without notice to those who must in the end defray the expense."

The Constitution of the State of Montana prohibits the legislature from passing any law "which imposes on the people of any county or municipal subdivision of the state a new liability in respect to transactions or considerations already passed." In holding that an act of the legislature which authorized the assumption by municipalities of the payment of bonds and warrants of local improvement districts theretofore created, if a majority of the tax-paying electors should consent thereto, was not in violation of this constitutional prohibition, it was said, in *Stanley v. Jeffries* (1929), 86 Mont. 114, at page 133:

> "Herein the Legislature did not attempt to impose a liability upon the people with respect to past transactions, but merely gave them the option to impose such a burden upon themselves if they saw fit, which, in so far as this inhibition of the Constitution is concerned, they may do."

The same reasoning was followed in *Ames v. Mathews* (1930), 99 Fla. 1, in determining whether certain obligations were incurred for local, as distinguished from state, purposes. In that case, the court was called upon to determine whether a statute providing that gasoline tax revenues should be apportioned to counties in proportion to their bonded indebtedness for roads and bridges was violative of a constitutional provision prohibiting the use

of state taxes for local purposes. In holding that the use of tax moneys for the payment of such road and bridge bonds would be for a local purpose, it was pointed out that the legislature might have provided for the construction of the roads and bridges in the first place but that it did not do so, and that (page 23):

> "The counties and districts could have refrained, but they did not; they borrowed the money by issuing bonds, and constructed the roads. The Legislature merely authorized; it did not compel. So each of the counties and districts, of its own choice, took the necessary steps to issue the bonds upon the ground that the construction of the roads in question constituted a county (or district) purpose, which it was, although the same construction projects might have been accomplished by the state as a state purpose."

From the foregoing authorities, it seems clear that where the legislature authorizes, as distinguished from a command, something to be done by an inferior board or tribunal, the act done pursuant to such authorization is that of the inferior board or tribunal and not of the legislature.

For the reasons as stated, appellant respectfully submits that section 13½ of the Los Angeles County Flood Control Act (Stats. 1937, p. 1763) is invalid for the failure to insert therein provision for notice and hearing before the obligations created by the Board of Supervisors of the Los Angeles County Flood Control District under the authority of that section become a lien upon the lands assessed in accordance with its provisions.

POINT II.

The Supreme Court of the State of California Erred in Holding That by Designating the Classes of Structures Which Might Be Transferred to the Los Angeles County Flood Control District at the Discretion of the Board of Supervisors of Los Angeles County It Is to Be Presumed That the Legislature Concluded That the Los Angeles County Flood Control District Would Be Benefited by the Structures of Such Classes If and When They Should Be Acquired on Behalf of the Flood Control District.

The Supreme Court of the State of California stated, in its decision rendered in the case at bar, that:

> "* * * By designating in section 13½ the particular property which may be acquired by the flood control district it must be presumed that the legislature concluded that the entire flood control district would be so benefited by the use of the designated drainage improvements in the larger and broader program of the flood control act." [R. 24.]

The error in this conclusion lies in the fact that section 13½ of the statute designates drainage improvements exclusively by the statutory authority under which they were created. The statute contains no reference whatsoever to the physical character of such improvements. In determining the question of whether a particular improvement is of benefit to a locality, the governing factor is the design and construction of the improvement, and not the authority by which it was designed and constructed.

This reasoning on the part of the Supreme Court of California is but an ineffectual attempt to bottom the authorization for the transfer on a theory of benefit to the additional lands assessed. In other words, the court was making a vain attempt to avoid the logic of its previous decision in *Reclamation District v. Birks* (1911), 159 Cal. 233. In that case the legislature created Reclamation District No. 70 (New 70), which embraced within its limits Swamp Land District No. 70 (Old 70) and another reclamation district. In holding that an assessment could not be levied on lands in the new district for the purpose, in effect, of meeting the debts of the swamp land district, which formed only a part of the new district, it was said, commencing at page 239:

> "* * * If the reclamation work which Old 70 did was of value before its absorption into the new district, it became of no less value by the change of management. The property-owners of Old 70 are still receiving all the benefits which may follow the works of reclamation which they constructed, and it is but just that they should be called upon to do what originally they undertook to do,—namely, to pay for those works. Upon the other hand, it would be most manifestly unjust, if not illegal, to impose upon all of the land of the new district the cost of the reclamation works which had been constructed by the old district. The old district forms but a part of the territory of the new district. Much of the land of the new district could not be benefited by the reclamation works of the old district, and to declare that the debt of the old district was a debt of the new, or to do, in effect the same thing as the trustees here undertook to do, by purchasing the property of the old district, would result in imposing a lien upon lands under the guise of special benefits, which lands

could, in the very nature of things, receive no benefit from the work. To illustrate: Conceive the case where a reclamation district has incurred an indebtedness for reclamation works which have proved inefficient and abortive; the debt remains, and the work is entirely without benefit, even to the district which ordered it. If by the creation of a new district, embracing the territory of the old, it were sought to be held that the debts of the old district, by operation of law, became the debts of the new, it would result in imposing a *pro rata* proportion of that debt upon land never within the scheme of reclamation when the debt was incurred—land which was not in fact benefited, and which it was never in contemplation could be benefited. Thus gross wrong would be perpetrated upon property-owners, in absolute violation of the law which justifies the imposition of this species of tax burden solely upon the theory that their land will derive a commensurate amount of benefit from the work for which the assessment is levied.

"There is no denial in this of the power of the legislature to apportion indebtedness where the boundaries of municipal or *quasi* municipal corporations have been changed, where one has been absorbed by another, where two or more have been consolidated, or where a different class or kind of municipal corporation has been created which comprises the territory of a formerly existing corporation. (28 Cyc. 175 *et seq.*) The principle which is here announced is simply this, that where a debt has been imposed upon the property of a *quasi* municipal corporation such as a reclamation district, which debt is to be paid by the owners of the property within the district in proportion to the benefits which their lands receive from the work done, it is not within the power

of the legislature to transfer and impose this debt upon property not within the district at the time the original obligation was created, and which was not benefited by the work done. Thus it may be conceded that the legislature would have the power in such a case as this to impose the obligation of the debt of Old 70 upon New 70, but this transfer of the indebtedness would not make it a lien upon all the property of New 70, and when an assessment came to be made for the extinguishment of the debt, only the property of Old 70 benefited or supposedly benefited by the work which the indebtedness represented would be legally assessable for this debt."

The correctness of the views expressed in *Reclamation District v. Birks (supra)* was recognized by the court in its subsequent decision in *Barber v. Galloway* (1924), 195 Cal. 1. In that case the legislature created the Palo Verde Irrigation District (Stats. 1923, p. 1067), for the purpose of eliminating the inefficiencies and extra expense occasioned by the functions of a levee district, a drainage district and a mutual water company which were "separate and independent agencies." It was contended that the entire irrigation district was benefited by the maintenance of existing canals and levees and that the act was void in not spreading the burden therefor throughout the entire irrigation district. But the Supreme Court of California said (page 9):

> "We see no error in continuing the obligation as to the maintenance of existing levees upon the property found to be benefited thereby at the time that the district was originally created."

The court further pointed out that the act was valid, as it did not attempt to burden lands in the irrigation district lying outside of the limits of the former levee district or drainage district with the debts of these districts, it being said, at page 13:

> "The provision that the irrigation district shall assume all of the outstanding indebtedness of the former levee district, whether known or unknown, and also of the drainage district, contained in sections 12 and 13 of said act, are not violative of the rule laid down in the case of *Reclamation District v. Birks, supra*, for the reason that the statute does not purport to render land within the irrigation district and not within either the former levee district or drainage district liable for the debts of said district. It merely provides that the irrigation district shall enforce the payment of the debts of those districts to the same extent and in the same way that payment would have been enforced had those districts continued to exist."

Subsequent to the decision in *Barber v. Galloway (supra)*, the legislature amended the Palo Verde Irrigation District Act by adding section 15a (Stats. 1925, p. 637), which provides, in part, that:

> "It is therefore found, and the legislature does hereby declare, that all of the lands and improvements thereon within the boundaries of the Palo Verde irrigation district have been, are now, and will continue to be uniformly benefited by the strengthening, maintenance and operation of all exist-

ing levees, drains, and water system, as well as additions, extensions, or improvements thereof which may hereafter be constructed, maintained and operated, and should therefore bear the burden of the entire cost thereof upon a uniform basis."

Under the authority of section 15a, refunding bonds were voted at an election held in the irrigation district to take care of the bonds of the levee district, the drainage district and the mutual water system. The validity of the bonds was upheld in *Palo Verde Irrigation District v. Seeley* (1926), 198 Cal. 477, in view of the fact that the legislature had made an express declaration of benefit to the lands within the irrigation district, it being said, at pages 486, 487 and 488:

"Respondent insists, however, that the facts and decision in the instant case are practically identical with the facts and decision in the case of *Reclamation District No. 70 v. Birks*, 159 Cal. 233 [113 Pac. 170], and that the instant case is therefore covered and controlled by the latter case. * * * The question of what the situation would be had there been, as in the instant case, a legislative finding that the lands of the new district were benefited by the improvements of the old district was not discussed and obviously could not have been decided for the reason that that question was not then before the court. * * *

"In the instant case there is an express enactment by the legislature to the effect that all the lands within the irrigation district will be benefited by the

improvements of the old drainage district, the old levee district and the Palo Verde Mutual Water System. In the *Birks* case there was no such enactment. In the instant case express provision is made for the assumption of the debt of the old levee district by the new irrigation district by means of the issuance of refunding bonds. In the *Birks* case no such provision had been made. Therein lies the distinction and differentiation between the *Birks* case and the present case."

Such statements in *Palo Verde Irrigation District v. Seeley*, that:

> "The question of what the situation [in *Reclamation Dist. v. Birks*] would be had there been, as in the instant case, a legislative finding that the lands of ths new district were benefited by the improvements of the old district was not discussed and obviously could not have been decided for the reason that that question was not then before the court" (p. 487),

and

> "In the instant case there is an express enactment by the legislature to the effect that all the lands within the irrigation district will be benefited by the improvements of the old drainage district, the old levee district and the Palo Verde Mutual Water System. In the *Birks* case there was no such enactment" (p. 488),

show that the mere passage of an act by which the legislature itself sets up a new special assessment district to take over the maintenance and control of works of exist-

ing special assessment districts does not constitute a finding that the lands embraced within the larger newly created district are benefited by the works of the smaller district. If this be so, *a fortiori*, the enactment of a statute conferring discretionary power upon an administrative board to transfer to another special assessment district certain classes of structures classified only according to the authority under which they were constructed and maintained does not constitute a finding of benefit to the district to whom the burden is shifted.

Appellant respectfully submits that the correct rule was enunciated in *Reclamation District v. Birks (supra)*, 159 Cal. 233; *Barber v. Galloway (supra)*, 195 Cal. 1, and *Palo Verde Irrigation District v. Seeley (supra)*, 198 Cal. 477, and that the Supreme Court of California erred in not following that rule in the case at bar, particularly in view of the fact that the legislature, in effect left to the determination of the Board of Supervisors the question of fixing the boundaries of the district which is to bear the burden of the obligations of the drainage districts theretofore incurred.

POINT III.

The Supreme Court of the State of California Erred in Holding That Section 13½ of the Los Angeles County Flood Control District Act Refers to Specific Classes of Structures, the Nature of Which Indicates Their Relative Usefulness for the Purposes of the Flood Control District Without the Necessity of Any Express Declaration to Such Effect.

It is stated, in the decision of the Supreme Court of the State of California, that:

> "* * * Section 13½ * * * refers to the acceptance of a limited class of described property, namely, the specified storm drain improvements, drainage improvements, and drainage systems, which from the nature of such property indicates without any express declaration its relative usefulness for the purposes of the flood control district." [R. 22.]

The error in the foregoing statement, in so far, at least, as it applies to special assessment districts formed for drainage purposes, lies in the fact that (a) the validity of the special assessment drainage districts rests on the theory that they serve a purpose different from that of the Los Angeles County Flood Control District and are of benefit only to limited areas within the Flood Control District, and that (b) special assessment districts when formed are presumed to include within the district all lands which will be benefited by the improvements of the district.

(A) THE VALIDITY OF THE FORMATION OF DRAINAGE DISTRICTS WITHIN THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT RESTS ON THE THEORY THAT THEY SERVE A PURPOSE DIFFERENT FROM THAT OF THE FLOOD CONTROL DISTRICT AND ARE OF SPECIAL BENEFIT ONLY TO LIMITED AREAS WITHIN THE FLOOD CONTROL DISTRICT.

The Los Angeles Flood Control District was created in 1915. Drainage District No. 1 was not formed until 1917 and the forming of the district was attacked in *Van de Water v. Pridham* (1917), 33 Cal. App. 252, on the ground that the Los Angeles County Flood Control District Act made inoperative within the territory of that district the provisions of the 1903 drainage district statute (Stats. 1903, p. 354), under which Drainage District No. 1 was organized. In declaring that the drainage district statute was still in force and effect within the territory of the Los Angeles County Flood Control District, it was said, in that case, commencing at page 261:

> "* * * We are unable to perceive any merit whatsoever in this contention, and agree with counsel for petitioner that 'there is a radical difference between the purposes of the drainage act involved in this action and the said Los Angeles county flood control act. The purpose of the drainage act is to dispose of the water and get rid of it as an injurious element; while the purpose of the Los Angeles county flood control act is to conserve it as a beneficial agent.' The purpose of one is 'to promote the drainage of wet, swamp or overflowed lands'; the other, as de-

> clared by the first paragraph of section 2, is 'to provide for the control of the flood and storm waters of said district [which embraces practically the entire county of Los Angeles], and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district.' The fact that in the proceedings mention is made of the proposed drainage ditch as the 'construction of a storm drain,' which purpose it might at times serve, is in no wise inconsistent with the purpose declared in the act itself. Certainly it was not the intent of the Legislature that by creating a flood control district, embracing almost the entire county of Los Angeles, such act should repeal all provisions for the drainage of wet and swamp lands in the county, any more than by the act under which irrigation districts are created it was intended to destroy all acts providing for the drainage of swamp-lands embraced within such irrigation districts."

A similar situation was presented in *Moore v. Thornburg* (1930), 208 Cal. 657, wherein a statute providing for the formation of improvement districts within irrigation districts (Stats. of 1927, p. 1415) was held valid, it being said, at page 660:

> "Manifestly, this act was passed with the design to create elasticity in the government of irrigation districts so that special improvements independent of the general plan of improvement of the district might be made therein and the burden thereof rest solely upon the shoulders of those benefited thereby."

With the exception of Drainage Districts Nos. 1 and 3, the drainage districts involved were formed pursuant to the provisions of the Drainage District Improvement Act of 1919 [R. 2], a statute passed some five years subsequent to the creation of the Los Angeles County Flood Control District. The validity of the Drainage District Improvement Act of 1919, in so far as its application within the Los Angeles County Flood Control District is concerned, is sustainable only on the theory that it provides for the formation of special assessment districts for purposes other than that served by the Flood Control District and calculated to benefit only limited areas within the Flood Control District. Consequently, it seems illogical to say that property of such drainage districts is by its nature calculated to be of benefit to the entire Flood Control District.

(B) Only Lands Within a Special Assessment District Are Presumed to be Benefited by the Works of the District.

If the improvements of the respective drainage districts are in fact of benefit to the Flood Control District, all lands within the Flood Control District would have been included within the territory of each drainage district at the time it was established. That the limited areas within each of the drainage districts only are presumed to be benefited by the improvements of the respective districts results from the fact that no other lands were included within the boundaries of the respective drainage districts.

In *Moulton v. Parks* (1883), 64 Cal. 166, in pointing out that large bodies of land not within a levee district could not be included within levees constructed by the district, as the lands within the limits of the district can only be assessed for benefits conferred upon *such* lands, it was said, at page 181:

> "* * * The establishment of an assessment district is a declaration that the only lands which will be benefited by the proposed protection works, are the lands within the district."

This is particularly true of the drainage districts formed under the Drainage District Improvement Act of 1919 as it is provided in section 1 thereof that the boundaries of these districts "shall include all the lands which in the opinion of the county surveyor will be benefited by the improvement contemplated." Indulging in the presumption that "official duty has been regularly performed" (Cal. Code of Civil Procedure, sec. 1963, subd. 15), the conclusion follows that such drainage districts when formed included all lands that would be benefited by the works of the respective districts.

It is therefore apparent that section 13½ of the Los Angeles County Flood Control District Act does not refer to specific classes of structures of such a nature as to be presumptively of benefit to the Flood Control District.

POINT IV.

The Statute of the State of California, To-Wit, Statutes of 1937, Page 1763, Entitled, "An Act to Amend the 'Los Angeles County Flood Control Act,' by Adding Thereto a New Section, to Be Numbered 13½, Relating to the Conveyance and Transfer to Such District of Storm Drain Improvements, Drainage Improvements and Drainage Systems, for the Assumption of Liability for the Payment of Bonds of Drainage Districts Issued for the Construction of Storm Drain Improvements, Drainage Improvements and Drainage Systems So Conveyed and Transferred, for the Operation, Maintenance and Repair of Such Storm Drain Improvements, Drainage Improvements and Drainage Systems and the Levy of a Special Tax Therefor," Approved June 29, 1937, Is Unconstitutional and Repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in That It Deprives Appellant of His Property Without Due Process of Law.

From what has been stated under the preceding points, to appellant the conclusion seems inescapable that section 13½ of the Los Angeles County Flood Control Act is repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States. This conclusion cannot be avoided by resort to judicial construction or interpretation as the defect is inherent in the statute itself, in that it authorizes an administrative board to fix the boundaries of a special assessment district and levy special assessments without providing for a hearing and determination of special benefit to the lands assessed. No matter how the statute may be construed, this fact can-

not be avoided. It is immaterial that authority to enact such a statute may or may not be found in the state constitution, as the Constitution of the United States is paramount to state constitutions, as well as state statutes. (*Lent v. Tillson,* 140 U. S. 316, 330; *McCulloch v. State of Maryland,* 17 U. S. 316, 406; see, also *Hershey v. Cole,* 130 Cal. App. 683, 687.) The contentions of appellant cannot be met by resort to construction of the statute, for, as stated by this Honorable Court in *Corn Products Refining Co. v. Eddy* (1918), 249 U. S. 427, 432:

> "* * * In cases of this kind, we are concerned not with the characterization or construction of the state law by the state court, nor even with the question whether it has in terms been construed, but solely with the effect and operation of the law as put in force by the state. St. Louis Southwestern R. Co. v. Arkansas, 235 U. S. 350, 362, 59 L. Ed. 265, 271, 35 Sup. Ct. Rep. 99; Kansas City, Ft. S. & M. R. Co. v. Botkin, 240 U. S. 227, 231, 60 L. ed. 617, 618, 36 Sup. Ct. Rep. 261; Mountain Timber Co. v. Washington, 243 U. S. 219, 237, 61 L. ed. 685, 696, 37 Sup. Ct. Rep. 260, 13 N. C. C. A. 927; Crew Levick Co. v. Pennsylvania, 245 U. S. 292, 294, 62 L. ed. 295, 297, 38 Sup. Ct. Rep. 126."

CONCLUSION.

In conclusion, it is respectfully submitted that section 13½ of the Los Angeles County Flood Control District Act [Stats. 1915, p. 1502, as amended by Stats. 1937, p. 1763] is violative of the rights of appellant as guaranteed by article XIV of the Amendments to the Constitution of the United States, in that it permits his property to be taken without due process of law; and that the judgment of the Supreme Court of the State of California sustaining the validity of the statute as against the assertion of its repugnancy to article XIV of the Amendments to the Constitution of the United States should be reversed.

Respectfully submitted,

RAY L. CHESBRO,

FREDERICK VON SCHRADER,

WILLIAM H. NEAL,

BOURKE JONES,

Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 368

THE CITY OF LOS ANGELES AND RAY L. CHESEBRO,
Appellants,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

MOTION TO DISMISS OR AFFIRM.

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County Counsel;
H. W. KENNEDY,
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Counsel for Appellees.

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Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 368

THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, AND RAY L. CHESEBRO,

Appellants,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES AS THE BOARD OF SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; JOHN ANSON FORD, LELAND M. FORD, HERBERT C. LEGG, ROGER W. JESSUP AND GORDON L. McDONOUGH, AS MEMBERS OF AND CONSTITUTING THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, AND EX OFFICIO THE BOARD OF SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,

Appellees.

MAKING AGAINST JURISDICTION OF THE COURT.

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

The appellees move to dismiss the appeal or for an order affirming judgment of the Supreme Court of the State of

California. These motions are based upon the following grounds:

1. As to appellant City of Los Angeles, no Federal question is involved.

2. Federal questions are foreclosed by previous decisions.

3. Questions involved are too unsubstantial to justify Supreme Court taking jurisdiction.

4. Determination of non-Federal questions by California Supreme Court sufficient to support its decision.

ARGUMENT IN SUPPORT OF MOTION.

I.

Constitutional Provisions Involved.

Section 13 of Article XI of the California Constitution provides:

> "The legislature shall not delegate to any special commission, private corporation, company, association or individual any power to make, control, appropriate, supervise, or in any way interfere with any county, city, town or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments or perform any municipal function whatever, except that the legislature shall have power to provide for the supervision, regulation and conduct, in such manner as it may determine, of the affairs of irrigation districts, reclamation districts or drainage districts, organized or existing under any law of this state."

II.

Statutory Provisions Involved.

The California Legislature, by Statute 1915, page 1502, passed the Los Angeles County Flood Control District Act. This act created a flood control district within the boundaries

designated therein. Section 2 of the act outlined the objects and purposes—in general to provide for the control and conservation of flood, storm and other waste water of the district. The district was given the usual corporate powers of a limited taxing district. Section 16 of the act provided, in part:

> "Said board of supervisors shall have power to do all work and to construct and acquire all improvements necessary or useful for carrying out any of the purposes of this act; and said board of supervisors shall have power to acquire either within or without the boundaries of said district, by purchase, condemnation, donation or by other lawful means in the name of said district, from private persons, corporations, reclamation districts, swamp land districts, levee districts, protection districts, drainage districts, irrigation districts, or other public corporations or agencies or districts, all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes of this act; • • • to compensate any • • • drainage district, • • • for any right of way, easement or property taken over or acquired by said Los Angeles County flood control district as a part of its work of flood control or conservation or protection provided for in this act, • • • ."

Section 13½ was added to the act by the Statutes of 1937, page 1763. This statute is set forth in full in appellants' Statement as to Jurisdiction.

III.

Nature of the Case.

Appellants filed a petition for writ of mandate in the Supreme Court of California, said petition directed to appellees. The alleged grounds for the right to the writ were that the legislature, by the passage of Statutes of 1937, page 1763, deprived appellants of their property without due process of law. As basis for this contention, appellants

asserted they were owners of taxable property which would be assessed to pay the cost of acquiring certain drainage improvements, storm drain improvements and drainage systems accepted by the governing board of the Los Angeles County Flood Control District pursuant to said statute. Appellants admitted that they were property owners within said flood control district and that said district was organized by the legislature. An application to the Supreme Court to review the decision of the California Supreme Court presents these questions:

1. If a State constitution gives the legislature plenary power over drainage districts, is a Federal question raised by the passage of an act wherein the legislature exercises the power granted to it over such district?

2. Is a Federal question presented where an act of the State legislature seeks to grant additional powers to the governing body of a special assessment district which the legislature itself has created?

3. Does the due process clause of the 14th Amendment require a hearing before an assessment can be levied against property within an assessment district, if the district was formed by the legislature and the method of assessing the property prescribed by that body?

4. Is a Federal question presented where the legislature impliedly determines that certain property is useful or necessary for the purposes of a district over which the legislature has plenary power, before such property can be acquired by such district?

IV.

As to Appellant City of Los Angeles, No Federal Question is Involved.

(a) Since a city is organized under state authority and its powers, rights and property are subject to State control,

it cannot invoke the protection of the 14th Amendment against a taking of its property by an act of the legislature.

(1) "The power of the state, unrestrained by the contract clause or the 14th Amendment, over the rights and property of cities held and used for 'governmental purposes,' cannot be questioned. • • • In none of these cases was any power, right or property of a city or other political subdivision held to be protected by the contract clause or the 14th Amendment. This court has never held that these subdivisions may invoke such restraints upon the powers of the state."

City of Trenton v. *State of New Jersey*, 262 U. S. 182.

(2) "The State, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the State constitution, may do as it will, unrestrained by any provision of the Constitution of the United States."

Hunter v. *City of Pittsburgh*, 207 U. S. 161.

(3) Other authorities to same effect

City of New Orleans v. *New Orleans Water Works Co.*, 142 U. S. 79;

Barnes v. *District of Columbia*, 91 U. S. 540;

City of Tulsa v. *Oklahoma Natural Gas Co.*, 4 F. (2d) 399;

Bulkeley v. *Williams*, 68 Conn. 131 (48 L. R. A. 465);

St. Louis v. *Shields*, 52 Mo. 351;

Police Jury v. *Shreveport*, 5 La. Ann. 661.

(b) Decisions of State courts on relation of rights of city and State are matters of local law not subject to review by the Supreme Court.

> "Thus the whole controversy is as to which of two existing agencies or arms of the state government is authorized for the time being to exercise in the public interest a particular power, obviously governmental, subject to which the franchise confessedly was granted. In this no question under the contract laws of the Constitution of the United States is involved, but only a question of local law, the decision of which by the Supreme Court of the state is final."
>
> *City of Pawhuska* v. *Pawhuska Oil & Gas Co.*, 250 U. S. 394.

V.

The Federal Question, if Any, is Foreclosed by Previous Decisions.

(a) Since the legislature had power to authorize the acceptance of the drainage improvements by the flood control district and impose upon that district the burden of paying for such improvements, it also had the power to authorize the governing body of the district to accept such transfer without hearing.

> (1) "The legislature, unless restricted with a state constitution, can create such districts directly • • • and with respect to districts thus formed, whether by the legislature directly or in an appropriate proceeding under its authority, the legislature may itself fix the basis of taxation or assessment; that is, it may define the apportionment of the burden, and its action cannot be assailed under the 14th Amendment unless it is palpably arbitrary and a plain abuse."
>
> *Houck* v. *Little River Drainage District*, 239 U. S. 254.

> (2) "The only possible source of objection remaining is the committing to the board of supervisors the power

to determine, without notice and hearing, when repairs are necessary and the extent of them. But these are details of state administration with which the Federal authority will not interfere, except, possibly, to prevent confiscation or spoilation, of which there is no suggestion in this case."

Breiholz v. *Pocahontas County*, 257 U. S. 118.

(3) Other authorities on the same point
Rouch v. *Himmelberger*, 305 Mo. 70 (264 S. W. 658);
Davidson v. *New Orleans*, 96 U. S. 97.

VI.

The Questions Involved are Too Unsubstantial to Justify the Supreme Court Taking Jurisdiction.

(a) The flood control district was created by the legislature and therefore property owners within it will not be heard to say that their property is taken without due process of law.

Hagar v. *Reclamation District*, 111 U. S. 701;
Spencer v. *Merchant*, 125 U. S. 345;
Fallbrook Irrigation District v. *Bradley*, 164 U. S. 112;
Walston v. *Nevin*, 128 U. S. 578;
French v. *Barber Asphalt Paving Co.*, 181 U. S. 324;
Wagner v. *Leser*, 239 U. S. 207;
Houck v. *Little River Drainage District*, *supra*.

(b) When the legislature forms a special assessment district and designates its boundaries, property owners in such a district cannot assail the action of the legislature unless such action is palpably arbitrary and a plain abuse of power.

Myles Salt Co. v. *Board of Commissioners*, 239 U. S. 478;
Houck v. *Little River Drainage District*, *supra*;
Miller & Lux v. *Sacramento-San Joaquin Irrigation District*, 256 U. S. 129.

(c) It is not a violation of the 14th Amendment to cast upon a special assessment district the burden of paying for improvements previously constructed.

Seattle v. *Kelleher*, 195 U. S. 351;
Wagner v. *Leser*, *supra*.

(d) The statute in question was an implied finding by the legislature that the drainage works authorized to be accepted by the flood control district were useful and necessary for flood control purposes.

San Christina Investment Co. v. *San Francisco*, 167 Cal. 762;
Los Angeles County Flood Control District v. *Hamilton*, 177 Cal. 119;
Johnson v. *City of San Diego*, 109 Cal. 468;
Palo Verde Irrigation District v. *Seeley*, 198 Cal. 477.

VII.

Where the Decision Rests Upon a Non-Federal Ground, the Supreme Court Will Not Entertain Jurisdiction Even Though a Federal Question is Involved.

Live Oak Water Users Ass'n v. *Railroad Commission*, 269 U. S. 355;
De Saussuri v. *Gaillard*, 127 U. S. 216;
American Railway Express Co. v. *Kentucky*, 273 U. S. 269;
A., T. & S. F. Railway v. *Railroad Commission*, 283 U. S. 380;
Utley v. *City of St. Petersburg*, 292 U. S. 106.

(a) The California Constitution has given the legislature plenary power over irrigation districts, reclamation (flood control) districts, and drainage districts.

"* * * The legislature shall have power to provide for the supervision, regulation and conduct, in such manner as it may determine, of the affairs of irriga-

tion districts, reclamation districts or drainage districts, organized or existing under any law of this state."

Sec. 13, Art. XI, State Constitution.

Palo Verde Irrigation District v. *Seeley, supra; Barber* v. *Galloway,* 195 Cal. 1.

(b) The legislature organized the flood control district, fixed its boundaries and prescribed its powers, one of which was to acquire the works of drainage districts.

"Said Board of Supervisors shall have power * * * to acquire * * * from * * * drainage districts * * * all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes of this act * * *."

Sec. 16, California Stats. 1915, p. 1502.

(c) The opinion in question decided that Section 13½ (Stats. 1917, p. 1763) was an implied finding by the legislature that the drainage improvements therein named would serve a necessary and useful flood control purpose.

"The petitioners do not question the propriety of a legislative finding that the designated improvements would be so beneficial. They complain of the absence of an express declaration in that regard. But from the import of Section 13½ the legislature must be deemed to have exercised its plenary power to make such a finding. That section is not construed as granting a general power to the boards of supervisors to acquire properties for the use of the district. It is rather a special declaration that it may acquire on behalf of the flood control district certain designated properties, namely, drainage works and improvements and systems constructed prior to January 1, 1937, by certain classes of drainage districts within the flood control district. This particularity of description of the improvements and property authorized to be accepted by the district presupposes a prior inquiry and investigation on the part of the legislature and a finding by it that such designated improvements will be useful for

the purposes of the district and beneficial to the ter
tory comprising the flood control district. * * * In t
matter of the acquisition of the property described
Section 13½, the legislature has itself decided the u
fulness of the property to the purposes of the flood c
trol district * * *."

(d) After the district was legally organized by the leg
lature, that body had the power to impose upon the distr
the burden of paying for improvements which the legis
ture impliedly found were of benefit to the property own
in the district.

Valley Farms Co. v. *County of Westchester*, 261 U.
155;
Rouch v. *Himmelberger, supra.*

(e) Giving to the governing body of the flood control d
trict the power to accept drainage improvements which t
legislature had found were useful, beneficial and necessa
for the purposes of the district did not violate the 14
Amendment.

Breiholz v. *Pocahontas County, supra.*

(f) The California decisions have upheld the right of t
legislature of that State to transfer to a special assessme
district the outstanding bonded indebtedness of smal
districts lying within such larger district; this is a questi
of local law and the Supreme Court must accept the int
pretation by the State court.

Johnson v. *City of San Diego, supra;*
Palo Verde Irrigation District v. *Seeley, supra;*
Barber v. *Galloway, supra.*

For the foregoing reasons appellees respectfully subm
that the Supreme Court of the United States should dism
the appeal because there is no Federal question involved
if it finds that there is a Federal question or if it conclud

dismissal cannot be granted, that it affirm the judgment of the California Supreme Court.

Respectfully submitted,

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U. T. Clotfelter,
F. Ray Bennett,
Of Counsel.

(7536)

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM 1938.

No. 368.

RAY L. CHESEBRO,

Appellant,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, as the Board of Supervisors of the Los Angeles County Flood Control District; JOHN ANSON FORD, LELAND M. FORD, HERBERT C. LEGG, ROGER W. JESSUP and GORDON L. McDONOUGH, as Members of and constituting the Board of Supervisors of the County of Los Angeles, and *ex officio* the Board of Supervisors of the Los Angeles County Flood Control District,

Appellees.

APPELLEES' BRIEF.

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IN THE

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LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, as the Board of Supervisors of the Los Angeles County Flood Control District; JOHN ANSON FORD, LELAND M. FORD, HERBERT C. LEGG, ROGER W. JESSUP and GORDON L. MCDONOUGH, as Members of and constituting the Board of Supervisors of the County of Los Angeles, and *ex officio* the Board of Supervisors of the Los Angeles County Flood Control District,

Appellees.

APPELLEES' BRIEF.

Opening Statement.

A motion to dismiss the appeal or to affirm the judgment of the California Supreme Court has heretofore been filed in accordance with Rule 12, paragraph 3, of the Rules of this Honorable Court. On October 17, 1938,

the Court granted the motion to dismiss the appeal as to the City of Los Angeles for want of a substantial federal question, basing its action upon *Pawhuska v. Pawhuska Oil and Gas Company*, 250 U. S. 394; *Trenton v. New Jersey*, 262 U. S. 182; *Williams v. Mayor*, 289 U. S. 36, 40; *South Bend v. DeHaven*, 302 U. S. 644. As to the appellant Chesebro, the order heretofore mentioned provided that "further consideration of the question of the jurisdiction of this Court and of the motion to dismiss or affirm is postponed to the merits". Appellees therefore now urge consideration of their motion to dismiss or to affirm as to the appellant Chesebro. In addition to the statement of grounds in support of said motion heretofore filed, appellees will in this brief present further argument on that motion. For the convenience of the Court, by stipulation of counsel, a map is attached to this brief, showing the boundaries of the Flood Control District and the drainage districts in question.

A. Question Presented.

Appellant has stated that the question presented is

> "whether appellant has been deprived of his property without due process of law, * * * by the action of a local administrative board in transferring to a special assessment district, * * * in which appellant is a property owner, the works, together with the debts, obligations and cost of maintenance, of certain other special assessment districts (drainage districts), under the purported authority of the statute which does not provide for notice to, and an

opportunity for, property owners of the district under which the debts and obligations are transferred to be heard on the question of whether the transfer will be of special benefit to the lands of such district." (App. Br. p. 3.)

Appellees do not believe that statement correctly reflects the question presented. The question involved in this appeal is: Can the Supreme Court review the construction of a state Supreme Court of a state statute upon the mere assertion that such state court erred in holding that the state statute did not deprive a property owner of his property without due process of law? In other words, this appeal calls upon the Supreme Court to pass upon the construction of a statute, rather than its validity.

B. Deficiencies in the Record.

Appellant has stated (App. Br. p. 4) that Los Angeles County has an area of approximately four thousand square miles and that in 1915 the legislature created in a portion of that area the Los Angeles County Flood Control District. It is stated (App. Br. p. 5) that a special election was held in said district, at which the issuance of bonds was approved. This action originated in the Supreme Court of California by a petition for a writ of mandate which the California Supreme Court, by its decision, refused to issue. The respondents in the original action, appellees here, appeared by general demurrer and the effect of the decision of the California Supreme Court was to hold that the petition did not state

facts sufficient to constitute a cause action. There was no allegation in the original petition, nor is there anything in the record before this Honorable Court, relating to the size of Los Angeles County nor to the formation of the Los Angeles County Flood Control District, nor is there any allegation in the original petition or in the petition for hearing in this Court, that the action of the legislature in adopting the statute here questioned acted arbitrarily, unreasonably or otherwise in the abuse of its legislative power. Since there was no proof in the state court, the original petition had to stand upon the allegations thereof, and the validity of the petition in this Court likewise depends upon the errors alleged to have been committed by the California Supreme Court. No deficiency of the statute in question is pointed out in the petition for this Honorable Court to take jurisdiction. The specification of assignment of errors [R. 17] each states an error of construction by the California Supreme Court.

ARGUMENT.

Appellees rely upon the following points in support of their motion to dismiss or to affirm and in answer to appellant's argument on the merits.

POINT I.

The Record in This Case Wholly Fails to Make a Case Within the Jurisdiction of This Court.

This point is based upon two grounds, namely:

FIRST. Without either alleging, proving, arguing or even claiming that the legislature of the State of California, in exercising its power to enact the statute complained of, acted in a manner that was either arbitrary or unwarranted or constituted a flagrant abuse of that power, appellant seeks to have this Court declare that such statute deprives him of property without due process of law, in contravention of Section 1, Article XIV, of the Amendments to the Constitution of the United States; and

SECOND. The sole question presented by this record is: Did the Supreme Court of the State of California err in its construction of the statute involved?

FIRST.

On page 16 of the transcript of record, under the head of "Summary Statement of Case", appellant states:

> "The validity of a statute of the State of California, to-wit, Statutes of 1937, page 1763, adding Section 13½ to the Los Angeles County Flood Control District Act, Statutes of 1915, page 1502, is

drawn into the question upon the ground that said statute deprives appellants and each of them of their property without due process of law and denies to each of them the equal protection of the laws, in violation of the provisions of Article V and Article XIV of the Amendments to the Constitution of the United States."

Following the above quotation appellant sets forth the grounds of the alleged denial of rights, but nowhere therein is it stated or alleged that the legislature of the state, in exercising its power to enact the statute, acted in a manner that was either arbitrary or unwarranted or that constituted a flagrant or other abuse of its power.

In appellant's brief the claim that the statute complained of violated the provisions of Article V of the Amendments to the Constitution of the United States is not mentioned, and therefore will be treated herein as abandoned.

The question of whether a state statute contravenes Article XIV of the Amendments to the Constitution of the United States has been many times before this Court and, because of this, the basis of the jurisdiction of this Court has been repeatedly stated in a long line of uniform decisions.

On this subject this Court, in the case of *Branson v. Bush*, 251 U. S. 182, 64 L. Ed. 215 (1919), at pages 190 and 220, respectively, said:

"The subject was carefully re-examined and the law restated in cases so recent as Phillip Wagner v. Leser, 239 U. S. 207, 60 L. Ed. 230, 36 Sup. Ct. Rep. 66, and Houck v. Little River Drainage Dist., 239 U. S. 254, 60 L. Ed. 266, 36 Sup. Ct. Rep. 58, with the result that the rule as we have stated it

was approved, with the qualification, which was before implied, that the legislative determination can be assailed under the Fourteenth Amendment only where the legislative action is 'arbitrary, wholly unwarranted,' 'a flagrant abuse, and by reason of its arbitrary character a confiscation of particular property'. And see Withnell v. Ruecking Constr. Co., 249 U. S. 63, 69, 63 L. Ed. 479, 39 Sup. Ct. Rep. 200; Hancock v. Muskogee, 250 U. S. 454, 457, 63 L. Ed. 1081, 1083, 39 Sup. Ct. Rep. 528; Embree v. Kansas City & L. B. Road Dist., 240 U. S. 242, 250, 60 L. Ed. 624, 628, 36 Sup. Ct. Rep. 317.

"The decisions relied upon by the company (Norwood v. Baker, 172 U. S. 269, 43 L. Ed. 443, 19 Sup. Ct. Rep. 187; Myles Salt Co. v. Iberia & St. M. Drainage Dist., 239 U. S. 478, 60 L. Ed. 392, L. R. A. 1918E 190, 36 Sup. Ct. Rep. 204; Gast Realty & Invest Co. v. Schneider Granite Co., 240 U. S. 55, 60 L. Ed. 523, 36 Sup. Ct. Rep. 254) are not in conflict with the rule, but plainly fall within, and are illustrations of, the qualification of it."

NOTE: The cases mentioned in the last paragraph above are all cited and relied upon by appellant here.

In *American Land Co. v. Zeiss*, 219 U. S. 47, 55 L. Ed. 82, 96, this Court said:

"It is to be borne in mind that it has been settled (Griffith v. Connecticut, 218 U. S. 563, 54 L. Ed. 1151, 31 Sup. Ct. Rep. 132, and cases cited) that the Fourteenth Amendment does not operate to deprive the states of their lawful power and of the right, in the exercise of such power, to resort to reasonable methods inherently belonging to the power exerted. On the contrary, the provisions of the due process clause only restrain those *arbitrary and unreasonable*

assertions of power which are not really within the lawful state power, since they are so unreasonable and unjust as to impair or destroy fundamental rights.

"To argue that the provisions of a statute are repugnant to the due process clause because a case may be conceived where rights in and to property would be adversely affected without notice being actually conveyed by the proceedings is, in effect, to deny the power of the state to deal with the subject. *The criterion is* not the possibility of conceivable injury, but *the just and reasonable character of the requirements,* having reference to the subject with which the state deals."

In *Mo. Pac. R. Co. v. Hughes,* 115 U. S. 512, 29 L. Ed. 463, 465, this Court said:

"As the case comes from a state court, our jurisdiction is limited to the objection that the statute violates the first section of the Fourteenth Amendment of the Constitution of the United States, and that it deprives the defendant of property without due process of law."

In discussing the compass of the words "due process of law" the Court said:

"They are intended, in addition to other guaranties of private rights, to give increased security against the *arbitrary deprivation* of life or liberty and the *arbitrary spoliation* of property.

"If the laws enacted by a state be within the legitimate sphere of legislative power and their enforcement be attended with the observance of other general rules which our system of jurisprudence prescribes for security of private rights, the harshness,

injustice and oppressive character of such laws will not invalidate them as affecting life, liberty or property without due process of law. * * * It is hardly necessary to say that the hardship, impolicy or injustice of state laws is not necessarily an objection to their constitutional validity; and that the remedy for evils of that character is to be sought from the state legislature." (Citing cases.) (Italics ours.)

In *Mountain Timber Co. v. Washington*, 243 U. S. 219, 61 L. Ed. 685, 696, this Court said:

"Whether this legislation be regarded as a mere exercise of power of legislation, or a combination of regulation and tax action, the *crucial inquiry* under the Fourteenth Amendment is whether it *clearly appears* to be *not a fair and reasonable exertion* of governmental power, but so extravagant or arbitrary as to constitute abuse of power. All reasonable presumptions are in favor of its validity, and the burden of proof and argument is upon those who seek to overthrow it. Erie R. Co. v. Williams, 233 U. S. 685, 58 L. Ed. 1155, 1160, 51 L. R. A. (N. S.) 1097, 34 Sup. Ct. Rep. 761.

"In Barbier v. Connolly, 113 U. S. 27, 31, 28 L. Ed. 923, 924, 5 Sup. Ct. Rep. 357, the Court, by Mr. Justice Field, said: 'Neither the (Fourteenth) Amendment—broad and comprehensive as it is—nor any other amendment was designed to interfere with the *power of the state*, sometimes termed the police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and *to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity.* From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such

as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits—for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon anyone, but to promote, with as little inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment." (Italics ours.)

In *Metropolitan Theatre Co. v. Chicago*, 228 U. S. 61, 57 L. Ed. 730, this Court said:

"Mere errors of government are not subject to our judicial review. *It is only its palpably arbitrary exercises* which can be declared void under the Fourteenth Amendment." (Italics ours.)

To the same effect see:

Alexander Theatre Ticket Office v. United States, 23 Fed. (2d) 44, 47, and

Quong Wing v. Kirkendall, 223 U. S. 59, 56 L. Ed. 350.

In *Wagner v. Leser*, 239 U. S. 207, 60 L. Ed. 230, this Court made a detailed review of its decisions on the subject, which it summarized thus:

> "Taking the decisions in this Court together, we think that it results that the legislature of a state may determine the amount to be assessed for a given improvement, and designate the lands and property benefited thereby, upon which the assessment is to be made, without first giving an opportunity to the owners of the property to be assessed to be heard upon the amount of the assessment or the extent of the benefit to be conferred.
>
> "We do not understand this to mean that there may not be cases of such flagrant abuse of legislative power as would warrant the intervention of courts of equity to protect the constitutional rights of landowners, because of arbitrary and wholly unwarranted legislative action. The constitutional protection against deprivation of property without due process of law would certainly be available to persons arbitrarily deprived of their private rights by such state action, whether under the guise of legislative authority or otherwise.
>
> "But in the present case there is neither allegation nor proof of such disproportion between the assessment made and the benefits conferred as to suggest that the small tax levied upon this property would amount to an arbitrary exercise of the legislative power upon the subject."

The parallel between the showing made in the *Wagner* case, *supra*, and that in the case at bar is unusually striking.

In *Miller & Lux v. Sacramento & San Joaquin Drainage Dist.*, 256 U. S. 129, 65 L. Ed. 859, 41 Sup. Ct. Rep. 404, this Court said:

> "Since Houck v. Little River Drainage Dist. (1915), 239 U. S. 254, 60 L. Ed. 266, 36 Sup. Ct. Rep. 58, the doctrine has been definitely settled that *in the absence of flagrant abuse or purely arbitrary action,* a state may establish drainage districts and tax lands therein for lawful improvements, and none of such lands may escape liability solely because they will not receive direct benefits.
>
> "The allegations of the original complaint are wholly insufficient to raise the issue in respect of *arbitrary legislative action* presented by Myles Salt Co. v. Iberia & S. M. Drainage Dist., 239 U. S. 478, 60 L. Ed. 392, 36 Sup. Ct. Rep. 204." (Italics ours.)

From the pronouncement of this Court in the cases above cited (and many others that could be cited) it follows that unless the record before it shows that it is alleged and clearly shown that a state legislature, in exercising its power to enact a statute, was palpably guilty of action that was arbitrary to the extent of flagrant abuse of that power, such record fails to disclose a case for the application of the Fourteenth Amendment by this Court. This clearly because this Court is concerned only with what the *legislature of a state* has done and not with what *state officials* do in construing or administering the statute.

As this Court said in *Mountain Timber Co. v. Washington, supra:*

> "All reasonable presumptions are in favor of its (statute) validity, and the burden of proof and argument is upon those who seek to overthrow it."

it is pertinent to measure appellant's showing by this ruler.

An examination of his 32-page transcript of record and of his 57-page brief discloses a total failure either to allege, to prove or to argue that the legislature of the State of California exercised its power to enact the statute assailed in a way that was either arbitrary or an abuse of such power. Indeed, there is not even a hint of such thing. The record before the Court in this case is wholly devoid of any mention of or reference to this vital element of a case within the prohibition of the Fourteenth Amendment.

SECOND.

This brings us to a consideration of ground SECOND above.

Appellant having signally failed to carry the burden imposed by the ruling in *Mountain Timber Co. v. Washington, supra,* struggles valiantly to justify his being in this Court on the ground that the Supreme Court of the State of California erred in its construction of the statute assailed.

This is a fair summary of the transcript of record and of appellant's brief, for in both is set out his assignment of errors, pages 16 and 17 of the former and pages 13 and 14 of the latter.

Those assignments are set out in three paragraphs and each of them begins with these words:

> "The Supreme Court of the State of California erred in holding that"

and in his conclusion, on page 57 of his brief, the appellant states that the ruling of the state Supreme Court should be reversed for the errors assigned.

All of the 42 pages of argument in appellant's brief are devoted exclusively to an attempt to prove that that ruling was erroneous. Nothing therein is said about arbitrary legislative action in the exercise of the power to enact the statute assailed.

It is clear, therefore, that appellant's quarrel is not with the *state legislature,* but with the *state Supreme Court.* It is not the action of the legislature, but the construction given to its act by the Supreme Court that is the basis of the appellant's attack on the statute assailed.

In this state of the record there is no case made for the application of the limitations of the Fourteenth Amendment.

In *Commercial Bank v. Buckingham,* 5 How. 317, 12 L. Ed. 169, in dealing with a similar case, this Court said:

> "If this Court were to assume jurisdiction of the case it is evident that the question submitted for our decision would not be whether the statutes of Ohio are repugnant to the Constitution of the United States, but whether the Supreme Court of Ohio has erred in the construction of them. It is the peculiar province and privilege of the state courts to construe their own statutes; and it is no part of the functions

of this Court to review their decisions or assume jurisdiction over them on the pretense that their judgments have impaired the obligations of contracts. The power delegated to us is for the restraint of unconstitutional legislation by the states, and not for the correction of alleged errors committed by their judiciary."

In *Ross v. Oregon,* 227 U. S. 150, 162, 57 L. Ed. 458, 463, the quotation last above is incorporated in full in the opinion.

In *Baltimore Traction Co. v. Baltimore Belt R. Co.,* 151 U. S. 138, 38 L. Ed. 102, 14 Sup. Ct. Rep. 294, Section 167 of Article 23 of the Code of Public General Laws of Maryland was assailed as violative of the Fourteenth Amendment of the United States Constitution in that it deprived complainant of property without due process of law. On the subject this Court said:

"It was objected below that the section violated the Fourteenth Amendment of the Constitution of the United States, in that the owner of the land condemned thereunder might be deprived of his property without due process of law because the act did not provide for any notice to him of the proceedings; but it had been previously decided by the Court of Appeals of Maryland that the act, properly construed, required notice. *Baltimore Belt R. Co. v. Baltzell,* 75 Md. 103.

"We are bound to accept the conclusion of the state court as to the proper construction of the statute of the state. Green v. Neal, 31 U. S., 6 Pet. 291 (8:402); Davie v. Biggs, 97 U. S. 628 (24:1086); Louisville N. O. & T. R. Co. v. Mississippi, 133 U. S. 590 (33:785)."

Writ of error dismissed.

In the case at bar the Supreme Court of the state has previously decided that the Drainage District improvements were of benefit to all the property in the Los Angeles County Flood Control District.

From *Louisville etc. R. Co. v. Mississippi,* 133 U. S. 590, 33 L. Ed. 785, the syllabus is quoted as follows:

> "The Mississippi statute of March 2, 1888, as settled by the Supreme Court of that state, applies solely to commerce within the state; and this Court must accept as conclusive such construction of the state statute by its highest court."

In *Seattle etc. Ry. Co. v. State of Washington,* 231 U. S. 568, 58 L. Ed. 372, 34 Sup. Ct. Rep. 185, this Court said:

> "The possibility of a different construction and the grounds for the one adopted both are obvious, but this Court does not sit to revise the construction of documents (an ordinance) by state courts, even if alleged, as this ordinance is not alleged, to be contracts protected by the Constitution of the United States. Ficher v. New Orleans, 218 U. S. 438, 54 L. Ed. 1099, 31 Sup. Ct. Rep. 57. There is no impairment by later legislation, and it takes more than a possible misconstruction to make a case under the Fourteenth Amendment."

From the decisions of this Court above cited it is clear that the record in this case falls far short of presenting a case within the limitations of the Fourteenth Amendment to the Constitution of the United States.

It follows, then, that the motion to dismiss the appeal interposed by appellees must be granted.

POINT II.

Where the Legislature Prescribes the Boundaries of a Special Assessment District and Fixes the Basis Upon Which Assessments Are To Be Levied, Property Owners Are Not Deprived of Their Property Without Due Process of Law.

The Los Angeles County Flood Control District boundaries were prescribed by the legislature (California Statutes 1915, p. 1502). The distinction between assessment districts created by the legislature and those created by subordinate legislative bodies frequently has been recognized by this Honorable Court and there can be no successful attack upon the proposition that in a district formed by the legislature property owners have been granted a hearing on the quetsion of the inclusion of their property within the boundaries of the district and upon the amount of the assessment to be levied against them. Thus it is said in *Houck v. Little River Drainage District*, 239 U. S. 254 (60 L. Ed. 266):

> "And with respect to districts thus formed, whether by the legislature directly or in an appropriate proceeding under its authority, the legislature may itself fix the basis of taxation or assessment; that is, it may define the apportionment of the burden, and its action cannot be assailed under the Fourteenth Amendment unless it is palpably arbitrary and a plain abuse. These principles have been established by repeated decisions. *Hagar v. Reclamation Dist.*, 111 U. S. 701, 709, 28 L. Ed. 569, 572 * * *; *Spencer v. Merchant*, 125 U. S. 345, 353, 356, 31 L. Ed. 763, 766, 767 * * *; *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112, 167, 168, 41 L. Ed. 369, 391, 392 * * *; *Bauman v. Ross*, 167 U. S. 548, 590, 42 L. Ed. 270, 288 * * *; *Parsons v. District*

of Columbia, 170 U. S. 45, 52, 42 L. Ed. 943, 946 * * *; *Williams v. Eggleston,* 170 U. S. 304, 311, 42 L. Ed. 1047, 1049 * * *; *Norwood v. Baker,* 172 U. S. 269, 278, 43 L. Ed. 443, 447 * * *; *French v. Barber Asphalt Paving Co.,* 181 U. S. 324, 343, 45 L. Ed. 879, 889 * * *; *Wight v. Davidson,* 181 U. S. 371, 379, 45 L. Ed. 900, 904 * * * ; *Wagner v. Leser,* decided this day (239 U. S. 207, *ante,* 230 * * *)."

The authorities cited in the portion of the opinion just quoted might be extended, for our research has revealed that the opinion therein expressed has found repeated enunciation by this Honorable Court so that the line of authorities is unbroken and the rule too well settled to justify additional authorities.

Accepting this principle, let us examine the statute in question. Section 13½ of the Flood Control District Act is a legislative declaration that the governing board of the Flood Control District "may accept on behalf of said district a transfer and conveyance of all but not less than all" of four classes of drainage structures lying within the territorial limits of said district. That section further provides that when such transfer is made the district shall assume the unpaid portion of any obligations incurred to construct such structures by levying an assessment in the same manner as other assessments are levied by the district. This is a legislative declaration that the drainage structures therein enumerated will benefit the property within the Flood Control District, and the state Supreme Court has so held. It cannot be said that

the statute had to provide that the property owners of the district could be heard on the right of the governing body of the district to accept such drainage structures any more than it could be said that those property owners had a right to be heard on each structure which the governing board of the district contemplated erecting. Once the district was formed by the legislature, the property owners are presumed to be benefited by any works lawfully constructed under the authority of the act and those same property owners are presumed to be benefited by any structures which the governing body of the district is authorized to purchase in furtherance of the purposes for which the district was created. Section 16 of the Flood Control Act, as originally enacted in 1915, granted to the governing board of the district authority to

> "acquire either within or without the boundaries of said district, by purchase, condemnation, donation or by other lawful means * * * from * * * drainage districts, all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes."

for which the district was created. This language is plain and explicit authority for the Los Angeles County Flood Control District to acquire the properties of the drainage districts described in paragraph 3 of the original petition filed in the California Supreme Court. It will be observed that there was no limitation in said section 16 as to the type of drainage district which could be so acquired, and therefore it must be assumed that any drainage district created under any law of the State of

California was within the provision just quoted. Section 13½, when it was added to the Flood Control District Act, described specific storm drain improvements, drainage improvements and drainage systems which could be acquired. Section 13½ and section 16 must be read together and, being read together, no property owner can successfully assert that by the acquisition of the properties enumerated in section 13½ he was deprived of his property without due process of law unless he contends that he was also deprived of his property without due process of law by the acquisition of any property enumerated in section 16 of the act.

Two kinds of hearings are guaranteed under the Fourteenth Amendment to the Federal Constitution to property owners in special assessment districts, *i. e.*, (1) a hearing on the inclusion of their lands within the district, and (2) a hearing on the apportionment of the burden to pay for such assessments. If the statute provides for a hearing on either of these questions, the constitutional amendment in question has not been contravened. Where the legislature has delineated the boundaries of a district, the courts have universally construed that to be a finding by the legislature that the lands embraced within the boundary delineated by the legislature will be benefited and no further hearing need be granted.

Houck v. Little River Drainage District, *supra*, and cases therein cited;

Londoner v. City and County of Denver, 210 U. S. 373.

POINT III.

Appellant Was Not Deprived of His Property Without Due Process of Law Because the Legislature Did Not Expressly Find That the Drainage Works Were Useful or Necessary to the Flood Control District.

The sole grounds for the assertion that appellant was deprived of his property must depend upon the right of the appellant to be heard on what works would be useful or necessary to accomplish the purposes for which the Flood Control District was organized. The legislature, by the enactment of section 13½, was properly held by the California Supreme Court to have impliedly found that the drainage works described by that act were useful and necessary. Upon this question the property owner is presumed to have had a hearing before the legislature. The legislature, in fixing the boundaries and determining the apportionment of an assessment, may make a finding by implication as well as to expressly so recite. This rule was recognized by the California Supreme Court in the case of *Los Angeles County Flood Control District v. Hamilton,* 177 Cal. 119. It was therein said:

> "The mere passage of the act, then, must be taken to import a finding by the legislature that the proposed work will answer a public purpose and that its execution will benefit the land within the district to such an extent as to warrant the imposition upon such land of the cost in the manner provided. The findings thus implied are as fully effective as if declared in express terms in the act itself. (*San Christina Investment Co. v. San Francisco*, 167 Cal. 762, 769.) The fixing of the district which is to

> bear the expense of a local improvement and the mode in which such expense is to be borne and distributed are primarily legislative questions."

Appellant concedes that if the legislature had expressly recited that the works described in section 13½ were useful or necessary that he would have no grounds for seeking a review of the California Supreme Court decision by the Supreme Court. The fixing of the boundaries of an assessment district necessarily implies a finding that the lands within such district will be benefited. *Fallbrook Irrigation District v. Bradley, supra,* and cases therein cited. The gist of appellant's contention is: Any works for which his lands may be assessed to pay their proportionate share cannot be acquired until after he has had a hearing on their acquisition. Thus stated, appellant's contention reveals its own fallacy. In the creation of improvements districts the works or improvements to be constructed are necessarily described in general terms. Surely appellant would not contend that in the creation by the legislature of a district in which sewers were to be constructed he was entitled to a hearing on the type of sewers and the manner of their construction. If the legislature established a sewer district and authorized sewers to be constructed therein, the governing body of such an improvement district would necessarily have the administrative function of determining the type, character, extent and location of such sewers. No property owner within such a district could be heard to say that he was deprived of his property because he

was not permitted a hearing on these questions. In the instant case the Flood Control District Act authorized certain works to be constructed in general terms. Each time the Board of Supervisors of the Flood Control District sought to build a dam, for example, it was not incumbent upon that board to give the property owners of the district a hearing on such proposed construction. No more can it be successfully asserted that the appellant in this action was entitled to a hearing before the Board of Supervisors on the acquisition of the drainage structures described in section 13½. The two instances are parallel. The answer to the construction of the dam is the answer to the right to be heard on the acquisition of the drainage improvements.

Article 14 of the Amendments to the Federal Constitution has never been construed to guarantee a hearing on that question. The finding by the legislature, either express or implied, on such a question is binding upon the property owners.

Fallbrook Irrigation District v. Bradley, supra;

People v. Sacramento Drainage District, 155 Cal. 373;

Brooks v. City of Oakland, 160 Cal. 423;

Miller & Lux v. Board of Supervisors, 189 Cal. 254.

POINT IV.

Where a Statute Authorizes Additional Structures To Be Constructed in a Special Assessment District, it Is Not Unconstitutional to Omit Therefrom a Provision for an Additional Hearing on the Question of Benefits.

The appellant's contention in the instant proceeding is similar to that which has been advanced in cases wherein statutes have been passed by state legislatures authorizing improvement districts of various kinds to do additional work and levy the cost thereof upon the lands within such districts. Some of these cases have been before the Supreme Court. Appellees believe that the decisions in those cases completely dispose of the appellant's contention that he was deprived of his property without due process of law.

In the early case of *Davidson v. City of New Orleans*, 96 U. S. 97, the contention was made that the Fourteenth Amendment to the Federal Constitution was contravened by a statute of Louisiana permitting an assessment to be levied against properties within an assessment district. Certain of the lands upon which the questioned assessment was levied had theretofore borne their proportionate share for the construction of certain drainage works constructed by private corporations. The argument was advanced that the statute permitting the assessment deprived the property owner of his property without due process of law inasmuch as it made his lands liable for double taxation. The Supreme Court pointed out that there was no federal constitutional prohibition against such double taxation, that the question was purely one for the state courts. This decision upheld an assessment

against lands for improvements which had theretofore been constructed. The similarity between the facts in that case and those in the instant appeal is striking. In the instant case the drainage improvements in question had been constructed prior to January 1, 1937, and the amendment to the Flood Control Act by the addition of section 13½ thereto permitted the governing body of the Flood Control District to levy and assess against the lands within such district the burden of paying the outstanding indebtedness on such improvements.

An even more striking parallel is found in the case of *Breiholz v. Pocahontas County,* 257 U. S. 118. In that action a system of drainage structures had been constructed and completed in 1909 and an assessment was levied against the lands within the district in proportion to benefits to pay for such system. Two years later, in 1911, the governing board of the district levied a further assessment on the lands within the district upon the same proportion as the original assessments to pay for the cost of repairing, deepening, widening, cleaning and reopening certain parts of the drainage system. The matter came before the Supreme Court upon the contention that the Fourteenth Amendment had been contravened because the property owner had been given no opportunity for a hearing on the levying of the second assessment. In passing upon this contention it was said:

> "The contention that a new notice and hearing were not required in this case by the due process provision of the Fourteenth Amendment is a sound one. We are dealing with the taxing power of the State of Iowa, exerted through the familiar agency of a regularly organized drainage district, which, it is admitted, properly included and, by the system of

drainage adopted, benefited the lands of plaintiff in error. It is admitted also that their lands were lawfully assessed to pay for the original drainage construction in the same proportion to benefits as that which was applied in this case to the cost of the improvements and repairs. * * *

"The provision of the section assailed, that the cost of repairs shall be assessed upon the lands of the district in the same proportion that the original cost was assessed, since it only requires a simple calculation to determine the amount of each assessment when the cost of the improvement is once determined, is a legislative declaration that the lands will be benefited, and that, in such a case, notice and hearing before such a legislative determination are not necessary, is settled by many decisions of this Court; (citing cases)."

Appellees assert that there is no difference between a statute authorizing additional work to be done on the structures theretofore constructed and on constructing additional structures. Since this is true there is likewise no difference between assessing for additional work on existing improvements and paying for newly-acquired improvements.

Further authorities in support of this contention are cited by the Supreme Court in the case of *Valley Farms Company v. Westchester,* 261 U. S. 155. In that action a sewer system had been constructed under a New York statute of 1905. That act was frequently amended, until in 1917 it was amended to designate the boundaries of an area benefited by the trunk and outlet sewers theretofore constructed and to provide for taxing of property within such boundaries. The original district had been

formed after a hearing and the contention was made that, because the amendment of 1917 provided for no hearing, the property owners who were not in the original district, but were included in the district defined by the legislature were deprived of their property without due process of law. In succinct and summary manner this contention was disposed of in the following language:

> "It was unnecessary for the legislature to give notice and grant hearings to owners before fixing the boundaries of the district so as to include their lands, and prescribing the method of taxation. And it is unimportant that the sewer had been completed before the boundaries of the present district were established."

That statement is supported by the citation of *Phillip Wagner v. Leser,* 239 U. S. 207. In passing upon the validity of an assessment to pay for streets in the City of Baltimore which had previously been improved, the Supreme Court said in that case:

> "It is further urged, and much stress seems to be laid upon this point, that the complainant and others similarly situated were given no opportunity to be heard as to the amount of benefits conferred upon them, and the proper adjustment of taxes among property owners. But this question, * * * is foreclosed by the former decisions of this Court. This assessment, and the classification of the property to be improved, were fixed and designated by legislative act. It was declared that the property which had been improved by paving theretofore should, according to the width of the paving in front of the respective parties, be assessed at a certain sum per front foot. We think such a tax, when levied by the legislature, did not require notice and a hearing as to the amount and extent of benefits conferred

in order to render the legislative act due process of law within the meaning of the Federal Constitution."

If an assessment is upheld to pay for work already constructed on the grounds that the legislature fixed the boundaries of the district and determined the basis for the imposition of the burden, it must follow that an act of the legislature directing an assessment district to accept works constructed therein and to assume the obligation of paying any outstanding indebtedness thereon must also be upheld.

As has heretofore been said, property owners in an improvement district are not entitled to a hearing at each step of the proceeding, nor are they entitled to a hearing on every proposed assessment. Such is the holding of the Supreme Court in *Hagar v. Reclamation District,* 111 U. S. 701, and *Embree v. Kansas City L. & B. Road Dist.,* 240 U. S. 242, to mention only two of the leading cases on the subject.

The proposition that special assessments may be levied after the improvement has been made has been upheld also in the following authorities:

Seattle v. Kelleher, 195 U. S. 359;
Spencer v. Merchant, 125 U. S. 346;
Baltimore v. Ulman, 165 U. S. 719.

The legislative determination that property is benefited by improvements already constructed is conclusive on the courts unless there is a clear showing that the assessment is arbitrary or oppressive.

Parsons v. District of Columbia, 170 U. S. 52;
Spencer v. Merchant, supra;
Louisville & N. R. Co. v. Barber Asphalt Paving Co., 197 U. S. 433.

ANALYSIS OF APPELLANT'S ARGUMENT.

Appellant has specified three assignments of error. These specifications are discussed in Points I, II and III of appellant's argument. In the interest of clarity, appellees understand appellant's argument to be outlined as follows:

I. The California Supreme Court erred in upholding the validity of a statute which authorized the managing board of a special assessment district to accept property without granting a hearing to the property owners of such special assessment district.

A. The Los Angeles County Flood Control District is a special assessment district.

B. Special assessments cannot be validly levied without a determination of special benefit.

C. In special assessment districts the boundaries of which are not fixed by the legislature, property owners must be afforded an opportunity to be heard on the question of special benefits.

1. The governing board of the Los Angeles County Flood Control District is an administrative board.

2. The statute in question did not afford property owners an opportunity to be heard on the question of benefits.

D. The boundaries of the district to be assessed to pay for the cost of the properties transferred under the statute in question were fixed by a local administrative board.

II. The California Supreme Court erred in presuming that the legislature impliedly found the Flood Control District would benefit by the transfer authorized by the statute.

III. The California Supreme Court erred in holding that the statute in question refers to specific classes of structures which of necessity would benefit the district.

A. The formation of drainage districts within the larger Flood Control District were valid only if they were formed for a purpose different from that for which the Flood Control District was organized.

B. Only lands within a special assessment district are presumed to be benefited by the works of the district.

By thus reducing appellant's argument to outline form appellees believe they can shorten the reply argument. It will appear from the foregoing outline that Point I deals with the alleged error in upholding a statute which gave to an alleged administrative board discretionary powers on the acceptance of certain works and the assumption of the indebtedness incurred to pay for such works. Appellant attempts to prove this contention by asserting, first, that the Flood Control District is a special assessment district and, as such, may not levy assessments upon lands which are not specially benefited. Appellees agree with these two contentions. There is therefore no necessity to discuss the principles enunciated in the authorities cited under subheads (A) and (B) of appel-

lant's Point I (App. Br. pp. 16-22). Nor do the appellees seriously differ with the statement under subdivision (C) of Point I, although the applicability of the rule therein announced to the instant case is challenged by appellees. Appellant attempts to prove the principle enunciated by first citing authorities to the effect that the Board of Supervisors of the Flood Control District is an administrative board and does not exercise legislative power and second, by contending that the statute in question affords the property owners no opportunity to be heard on the question of benefits or the amount of the assessments. Appellees agree that the governing board of the Flood Control District has administrative functions, but it asserts that such board also has legislative functions. The board is the governing board of an agency of the state and, as such, exercises administrative, quasi-judicial and legislative functions, just as does the governing board of a county in California. Appellees find no occasion to question the authorities cited by appellant in support of his contention, but do not wish, by recognizing the fact that the Board of Supervisors is an administrative body, to be precluded from asserting that it is also a legislative body. Appellees therefore take up the remaining contentions of appellant, having indicated that certain of appellant's contentions need no denial or refutation by appellees.

ANSWER TO APPELLANT'S ARGUMENT.

Appellees find appellant's argument on Point I now reduced to a consideration of the contention that the California Supreme Court erred in upholding a statute which did not provide for a hearing to property owners of the Los Angeles County Flood Control District on the question of benefits or the amount of assessments. Appellant has cited *Los Angeles Railway Corporation v. Los Angeles County Flood Control District*, 78 Cal. App. 173, in which it was held that the assessments levied under the Flood Control District Act were assessments and not taxes in spite of the fact that the statute directed them to be levied, assessed, equalized and collected in the same manner as taxes. The case of *City of Inglewood v. County of Los Angeles*, 207 Cal. 697, was cited in further support of the same point. This contention may be and is readily accepted by appellees. The point of difference between appellant and appellees becomes manifest when appellant relied upon the cases of *Brooks v. City of Oakland*, 160 Cal. 423, and *Londoner v. City and County of Denver*, 210 U. S. 373, in support of the assertion that the property owners of the Flood Control District were deprived of the right to be heard on the amount of assessment that was to be levied against their property in the transfer to the Flood Control District of the drainage improvements described in section 13½ of the statute in question. Appellees find nothing in the cases cited which supports the contention that the statute in question is invalid upon the grounds just named.

In the first named case the act there under consideration contained no provision whatever for any notice or hearing upon the question of the limits of the sewer district. No

property owner was given by that statute any opportunity to be heard upon the question whether the proposed sewer would benefit his property or the question whether his property should be included in the district to be taxed for construction. The only hearing vouchsafed to him was the hearing with respect to the regular annual valuation of his property by the city assessor before the board of equalization. Appellant has quoted from that portion of the decision wherein the California Supreme Court held that at a hearing before the board of equalization the property owner would have no opportunity to show that his property would not be benefited by the construction of the sewer system. Such a statute was correctly held to be in contravention of Article Fourteenth of the Amendments of the Federal Constitution. However, in that case it was expressly stated (p. 427):

> "It is thoroughly settled by the decisions of that Court (United States Supreme Court) that the legislature itself has the power to fix by statute the limits of a local taxing district, such as the sewer districts contemplated by this act, without a formal notice or hearing, and that, when it has done so, the courts will not inquire into the matter of a hearing before the legislature, nor into the legislative decision as to the property benefited and properly included in the district, but will regard that determination as final and conclusive. * * *"

Surely that language cannot be construed to mean that the act by which section 13½ was added to the Los Angeles County Flood Control District Act is invalid because it did not afford property owners within the district an opportunity to be heard. That case follows the well-established rule of this Honorable Court that the

determination by the legislature of the boundaries or the imposition of assessments is final and conclusive upon the courts. In the instant action it was the legislature that authorized the acceptance of the drainage improvements here in question and, under the authority just quoted from, the courts are bound by that legislation and the property owner cannot successfully urge that he has been deprived of his property without due process of law.

In the case of *Londoner v. City and County of Denver, supra,* also cited by appellant to support his contention that he has been deprived of his property without due process of law, the rule recognized by the California Supreme Court in *Brooks v. City of Oakland, supra,* is emphasized.

The error of appellant's contention appears from the following statement on page 29 of his brief, wherein it is said:

> "At no stage during the process of arriving at a determination of what property shall bear the burden of the obligations of the drainage districts and the amount of the assessment therefor are property owners within the Flood Control District given an opportunity to be heard on whether the drainage district works are of benefit to lands within the Flood Control District, or on the amount of the assessment to be levied."

The property owners who were to bear the burden of the transfer of the drainage works to the Flood Control District had their hearing before the legislature for the boundaries of the district were defined by the legislature in the passage of the original Flood Control District Act and the property to bear the burden was specifically mentioned in the passage of section 13½ as

an amendment to that act. The section last mentioned states:

> "* * * The board of supervisors of the flood control district shall levy a special tax each year upon the taxable real property in said flood control district sufficient to pay the principal and interest on the bonds of said drainage districts as such principal and interest become due subsequent to the date of such conveyance and transfer. Such tax shall be levied and collected on said real property at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said county of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest of said drainage district bonds and for no other purpose."

That language distinguishes the statute here in question from the statutes considered in the cases cited by appellant under subdivision (C) of his Point I. The error of appellant's position to which we have just called attention is made the basis of appellant's argument under subdivision (D) of his Point I. Summarized, that argument is that the legislature merely authorized the governing body of the Flood Control District to accept the drainage works in question—did not command such works to be accepted. From that premise appellant draws the conclusion that the actual acceptance by the governing body of the district required a hearing on the necessity for such acquisition to prevent the property owners of the Flood Control District being deprived of their property without due process of law. Appellant, in support of his position, first cites *Swanson v. Therrell*, 112 Fla. 474. The portion of that opinion quoted by appellant

clearly indicates the distinction between the statute i question in that case and the one here under considera tion. There the legislature passed an act expressly de termining that certain lands were specially benefited an directed an assessment to be levied upon the lands withi an assessment district, but vitiated this declaration b inserting in the statute an express provision that i should not become effective until ratified by a majorit of the qualified electors. The court properly called at tention to this defect and correctly held that a statut imposing special assessments upon property cannot b made contingent upon the referendum of the electors o the district. Either the legislature makes the finding o benefits or it leaves that finding to be made by an inferio court. In the statute here under discussion the legis lature impliedly found that the drainage works describe in section 13½ would be beneficial to the district but lef it to the governing board of the district to determin when, if ever, such works should be acquired by th district. This is an entirely different situation than i the legislature had authorized (to use appellant's word the governing board of the district to find that the land within the district would be benefited by the acquisitio of the works described in the act. That would hav required a hearing by the inferior tribunal, to-wit, th governing body of the district, on the question of bene fits. The statute in question, however, was a legislativ finding of benefits.

Appellant next cites *Redman v. Kyle*, 76 Fla. 80 (8 So. 300). In that case it was held that a statute authoriz ing the levy of a tax up to fifty cents per acre on lands within an assessment district to pay the preliminary ex penses for the formation of the district was invalid. The

basis of the ruling was that the property owners within the district were not afforded an opportunity under the statute to be heard on the amount of the assessment to be levied against their property. The boundaries of the district in that case were fixed by the legislature but no basis was prescribed in the act for the fixing of the rate nor amount of the assessment except the maximum of fifty cents per acre. The Supreme Court of Florida attempted to distinguish the conclusion which it reached in that case with that reached by the United States Supreme Court in the case of *Houck v. Little River Drainage District*, 239 U. S. 254, by saying:

> "Counsel for appellees contend that, when the maximum amount of the tax or assessment is fixed by the Legislature, then no notice is required to be given of the imposition of such tax, and cites the case of Houck v. Little River Drainage Dist., 248 Mo. 373, 154 S. W. 739, as authority for this proposition. The cited case differs from the one now under consideration. In the former, the district was organized pursuant to a judgment of court, based upon proceedings as to which the owners of land in the district had notice. The Supreme Court of the United States in affirming this case distinctly says that, because of the provision for such notice, the question as to the constitutionality of the tax 'cannot properly be regarded as one of notice.' Houck v. Little River Drainage Dist., 239 U. S. 254, text 264, 36 Sup. Ct. 58, 61, 60 L. Ed. 266, text 274.
>
> "In the present case, the drainage district was created directly by the Legislature, and no notice was given to the owners of the land included within it of the proposed creation of the district, nor was any opportunity afforded them to object to any of

the proceedings, the amount of the tax to be a
sessed, or the rate to be levied, which rate may
placed at any amount not to exceed 50 cents p
acre, as may be determined by the board of supe
visors of the district."

The distinction between the Florida statute and t
statute of California here in question is this: The Ca
fornia statute authorized the assessments levied to pa
the obligations of the Flood Control District to be levi
on the *ad valorem* principle. Not only the assessmen
to pay for the drainage structures acquired under sectio
13½, but all of the obligations of the Flood Contr
District were to be levied on the taxable real propert
in the district on the basis of the assessed value of thos
lands. There was nothing in the Florida statute to guid
the commissioners in establishing a rate, nothing whic
the court could find would require the commissioners i
in fixing the rate to make a uniform rate, either upo
the basis of the location of the property, its value, o
the benefits to be derived by the preliminary expenses
We believe that the case of *Redman v. Kyle, supra, there*
fore, is not in point to sustain appellant's contention, an
that the decision in *Houck v. Little River Drainage Dis*
trict, supra, is applicable to the California statute i
question.

A further expression by this Honorable Court on the
constitutionality of an act authorizing the levy of an
assessment to pay the preliminary expenses of an assess
ment district which accords to the theory of the appellees
and disproves the theory of appellant is that of *West*
Crawford Road Improvement District v. Missouri P. R.
Co., 266 U. S. 187, wherein it was held that a legislative
determination that a tax for the preliminary expenses of

an abandoned highway improvement, assessed on the basis of the assessed valuation of the property in the district for the purpose of state and county taxation, would not exceed the anticipated benefits from the construction of the improvement.

Appellant cites *Flynn v. Chiappari*, 191 Cal. 139, and *Miller & Lux v. Board of Supervisors*, 189 Cal. 254, as California authorities supporting his contention that section 13½ was invalid because it authorized the governing board of the Flood Control District to accept the drainage works without making it mandatory upon such governing board that the property owners be granted a hearing on the question of benefits.

In the first named case the Board of Supervisors of the City and County of San Francisco authorized the Board of Public Works of that city to institute certain street improvement proceedings and provided that such Board of Public Works could determine that the expenses for such improvement should be levied upon a district if the Board of Public Works determined that such improvements were of more than local or ordinary public benefit. If the board did not so determine, then the expense was to be met by assessments levied on the front foot basis. The ordinance did not require that a hearing be given to property owners by the Board of Public Works in determining which of the assessment methods would be used. The California Supreme Court held that such an ordinance was void because here was a delegation to an administrative board and due process of law required that in such an instance property owners should be granted an opportunity to be heard on the question of the inclusion of their property and the amount to be assessed thereon.

The same general principle was announced in *Miller & Lux v. Board of Supervisors, supra.* Here again these cases are distinguishable from the one before us in that the legislature did not in either of those cases fix the boundaries nor prescribe the method of levying the assessment.

In further support of appellant's contention that where special assessment proceedings are left to inferior legislative bodies property owners must be given a hearing, he cites *State v. McGuire,* 109 Minn. 88. We call particular attention to the portion of that opinion quoted by appellant on page 39 of his brief wherein it is said:

> "It is clear that the original proceeding could not be authorized by the legislature without some provision for notice or opportunity to be heard upon these questions."

That case again follows the rule heretofore announced that the legislature may fix the boundaries and determine the lands to be charged with assessments and when that body does so the property owners are precluded from asserting that they had no opportunity to be heard on these two questions; but when the legislature authorizes a subordinate legislative body to determine these two questions, then the property owner is entitled at some stage of the proceedings to a hearing. Appellees find nothing in the case last cited to support appellant's contention of invalidity directed against section 13½ of the Los Angeles County Flood Control District Act.

The last two cases cited by appellant, to-wit, *Stanley v. Jeffries,* 186 Mont. 114, and *Amos v. Mathews,* 99 Fla. 1, were cited to the California Supreme Court by the appellant herein in a petition for a rehearing in the instant action. These two decisions are in accord with the decision of the California Supreme Court in *Redwood City v. Myers,* 7 Cal. (2d) 283, one of the authorities relied upon by the California Supreme Court in the decision under attack in this proceeding.

In the case of *Stanley v. Jeffries, supra,* the court held that a statute authorizing a city to assume the payment of bonds and warrants of special improvement districts within such city was constitutional and valid where the statute authorized the electors of such city to authorize the assumption of these debts at an election caused for this purpose. The statute there under consideration was the direct converse of the statute under consideration in *Redwood City v. Myers, supra,* but the two opinions are consistent. In *Amos v. Mathews, supra,* the Florida Supreme Court adopted the identical theory of the California Supreme Court in *Redwood City v. Myers, supra,* in that the court held that the state gas tax funds should not be used to purchase the bonds of counties and road districts merely because the legislature purported to grant such authority. These cases are not convincive of the proposition asserted by appellant nor are they controlling on the question presented for consideration in the instant appeal.

We have considered appellant's argument under his Point I. In his second point he asserts that the Supreme Court of California erred by assuming that the legislature impliedly found that the drainage structures in question would be of benefit to the Los Angeles County Flood Control District. In developing his argument under this point the following cases are cited:

Reclamation District v. Birks, 159 Cal. 233;

Barber v. Galloway, 195 Cal. 1:

Palo Verde Irrigation District v. Seeley, 198 Cal. 477.

Those three authorities were amply considered, cited and distinguished by the California Supreme Court in the decision now under consideration. The California Supreme Court held that those three cases were not authority for the proposition asserted by appellant. We are content to rely upon the consideration of these cases in the decision here brought in question as succinctly refuting appellant's contention.

With reference to the case of *Reclamation District v. Birks, supra,* the decision of the California Supreme Court [Tr. of Record, p. 26], states:

> "Our conclusions herein are not opposed to the holding in the case of *Reclamation District v. Birks,* 159 Cal. 233, relied upon by the petitioners. The present case does not involve a 'sale' of improvements from one district to another as was contemplated by the action of the trustees of the Reclamation District in the cited case. It was held in the *Birks* case that one district may not acquire property of another and impose upon the property owners

payment of the debts of the one from which the property has been acquired unless the land so burdened will derive a commensurate benefit therefrom. The result in that case has been obviated here by the action of the legislature declaring in effect that the lands to be so burdened have been or will be benefited by the transfer of the specified property. The same distinction supported the validity of an act which authorized the transfer of properties from a smaller to a larger district in the case of *Barber v. Galloway*, 195 Cal. 1. * * *

"Our conclusion herein that the statute involved is valid also finds support in *Palo Verde Irrigation District v. Seeley, supra.* In that case the writ of mandate directed the respondent to sign refunding bonds pursuant to the Palo Verde Irrigation District Act. (Stats. 1923, p. 1067.) That act provided for the organization of a Palo Verde Irrigation District which comprised and joined the territory and functions of three former independent agencies, a levee district, a drainage district, and a mutual water company. The legislature expressly declared that all of the improvements of each former district were uniformly advantageous and beneficial to all the lands of the new district. * * * It is true that in that case the legislative declaration of benefit was express, but it is seen that the same effect would obtain where, as here, from the nature of the enactment, the implication that the legislature so found is unmistakable and unavoidable."

In the foregoing quotation we believe the California Supreme Court has effectively refuted appellant's contention that the cases therein cited point out the error of the California Supreme Court in finding that the legis-

lature impliedly determined that the property owners of the Flood Control District would be benefited by the acquisition of the drainage structures in question. Appellant's contention is based upon the fact that section 13½ merely designates the drainage structures by the statutory authority under which they were created. That is hardly a correct interpretation of the language of section 13½. It authorized the transfer of drainage structures constructed under certain acts therein named which were in existence on January 1, 1937. Here was a description of structures which were in existence, and it must be presumed that the legislature had before it testimony as to what such structures were. The fact that they were described by the statute under which they were created does not lessen the particularity of their description.

As a corollary to appellant's Point II he insists in his Point III that the California Supreme Court further erred in holding that the nature of the drainage structures described in section 13½ demonstrate their usefulness for flood control purposes without any express declaration to such effect. He attempts to prove this point by two assertions: (a), that the validity of drainage districts res upon the theory that they serve a different purpose than that served by the Flood Control District; and (b), that a special assessment district is presumed to include within the district all the lands to be benefited by such improvements. He cites in support of the first contention just mentioned *Van de Water v.*

Pridham, 33 Cal. App. 252, which was an action considering the validity of one of the drainage districts here transferred, Drainage District No. 1. Here again the opinion of the California Supreme Court, now being questioned, considered the contention that the drainage district and the Flood Control District were organized for inconsistent purposes. In refusing to accept such a contention the decision stated [Tr. of Record, p. 27]:

> "The statement in the case of *Van de Water v. Pridham*, 33 Cal. App. 252, 261, that there is a radical difference between the purposes of the Drainage Act and the Flood Control Act, the purpose of the former being to dispose of the water as an injurious element and of the latter to conserve it as a beneficial agent, is not necessarily inconsistent with the conclusions herein expressed. It is not difficult to perceive that the object to be attained by the legislation here in question, namely, the combination of the functions of drainage and flood control to the end that drainage waters may as well be conserved through the joint facilities of the drainage and flood control districts, is well within the legislative power."

There can be no question but what the California Supreme Court has correctly perceived the view taken by the legislature, to wit, that the drainage structures would be beneficial to the accomplishment of the purposes of flood control and water conservation for which the Flood Control District was organized.

Appellant cites *Moore v. Thornberg*, 208 Cal. 657, as authority for his contention that smaller improvement districts organized within a larger district are serving different purposes. That may be true, but it is not necessarily exclusive. The drainage works here in question may have served the purposes for which they were constructed, to wit, drainage, but at the same time by virtue of a change of conditions they may now be of service in accomplishing the larger purpose of flood control. The fact that at the time of the formation of the drainage districts the sole object to be accomplished was the drainage of the area comprising such districts, does not forever preclude the possibility that the works constructed within such districts might also serve a larger area as a part of an extended flood control improvement.

The second ground upon which appellant contends the California Supreme Court erred in assuming that the drainage works would serve the flood control purposes is that at the time of the formation of the drainage districts all of the lands to be benefited by the drainage structures thereof were presumed to be included within such drainage district. That likewise may be granted, but it is not conclusive proof that by the uniting of the drainage structures of several drainage districts to assist in the accomplishment of a countryside flood control program, lands lying outside of any of the drainage districts would be benefited. We find no quarrel with the contention that at the time of the formation of the drainage districts they were to include within their boun-

daries all of the lands to be benefited by the works proposed to be constructed. What we do disagree upon is the theory that other lands may not now be benefited by the acquisition of these drainage structures by the Flood Control District.

The case of *Moulton v. Parks*, 64 Cal. 166, is authority for the statement that the establishment of a special assessment district contains all of the lands which will be benefited by the improvements constructed therein. That case, however, gives no weight to the contention of appellant that lands lying outside of improvement districts may not thereafter be benefited by the use of structures constructed within the boundaries of such districts. For aught that appears in this record the drainage structures within each of the drainage districts may subsequently be made a part of one united drainage system. This would obviously increase the benefits to the lands lying within the drainage districts and also extend those benefits to lands not now lying within any of the drainage districts but lying within the larger boundaries of the Flood Control District.

Conclusion.

Appellees insist there is no jurisdiction in the Supreme Court to review the construction of a statute by a state Supreme Court; this appeal seeks a review of the construction of a statute and not the validity thereof. The authorities cited by the appellant are not decisive nor germane to the issue presented by the petition before the Supreme Court. The appellant has not been deprived of

his property by the omission of the legislature in express terms to find that the drainage works in question would be useful or necessary for the accomplishment of the purposes for which the Los Angeles County Flood Control District was organized. The legislature impliedly so found and that was all that was necessary. For these reasons appellees assert that the judgment of the Supreme Court of California should be affirmed and that this petition should be dismissed, or that the judgment of the California Supreme Court must be affirmed on the merits since the statute in question did not deprive appellant of his property without due process of law.

Respectfully submitted,

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and
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and
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Of Counsel.

STIPULATION.

It is hereby stipulated by and between counsel for the respective parties to the above entitled action, that appellees may include in their brief a map showing the boundaries of the Los Angeles County Flood Control District and the boundaries and area in acres of the drainage districts within such Flood Control District; and

It is further stipulated that appellees may file their brief at the time of oral argument.

Dated this 23rd day of January, 1939.

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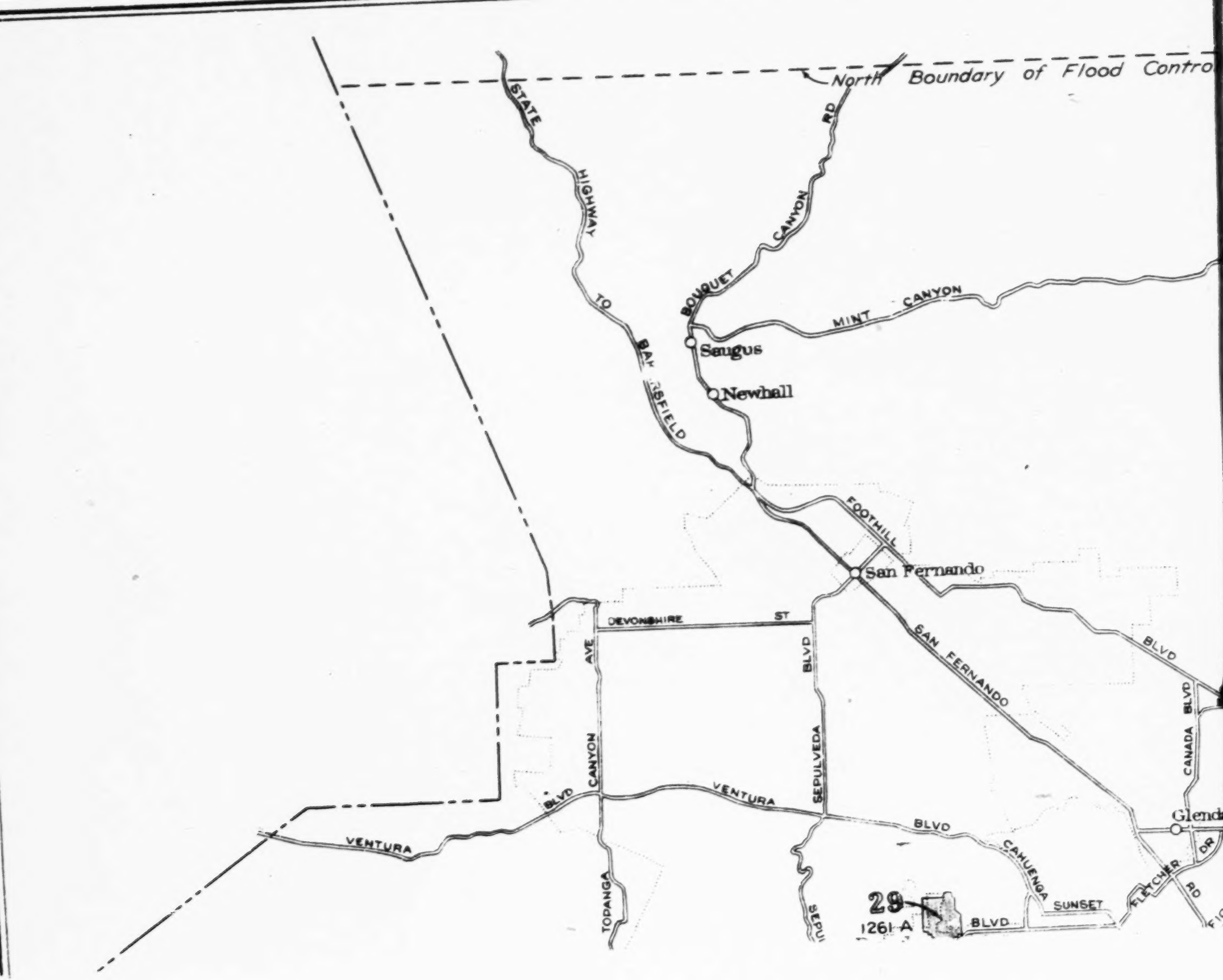
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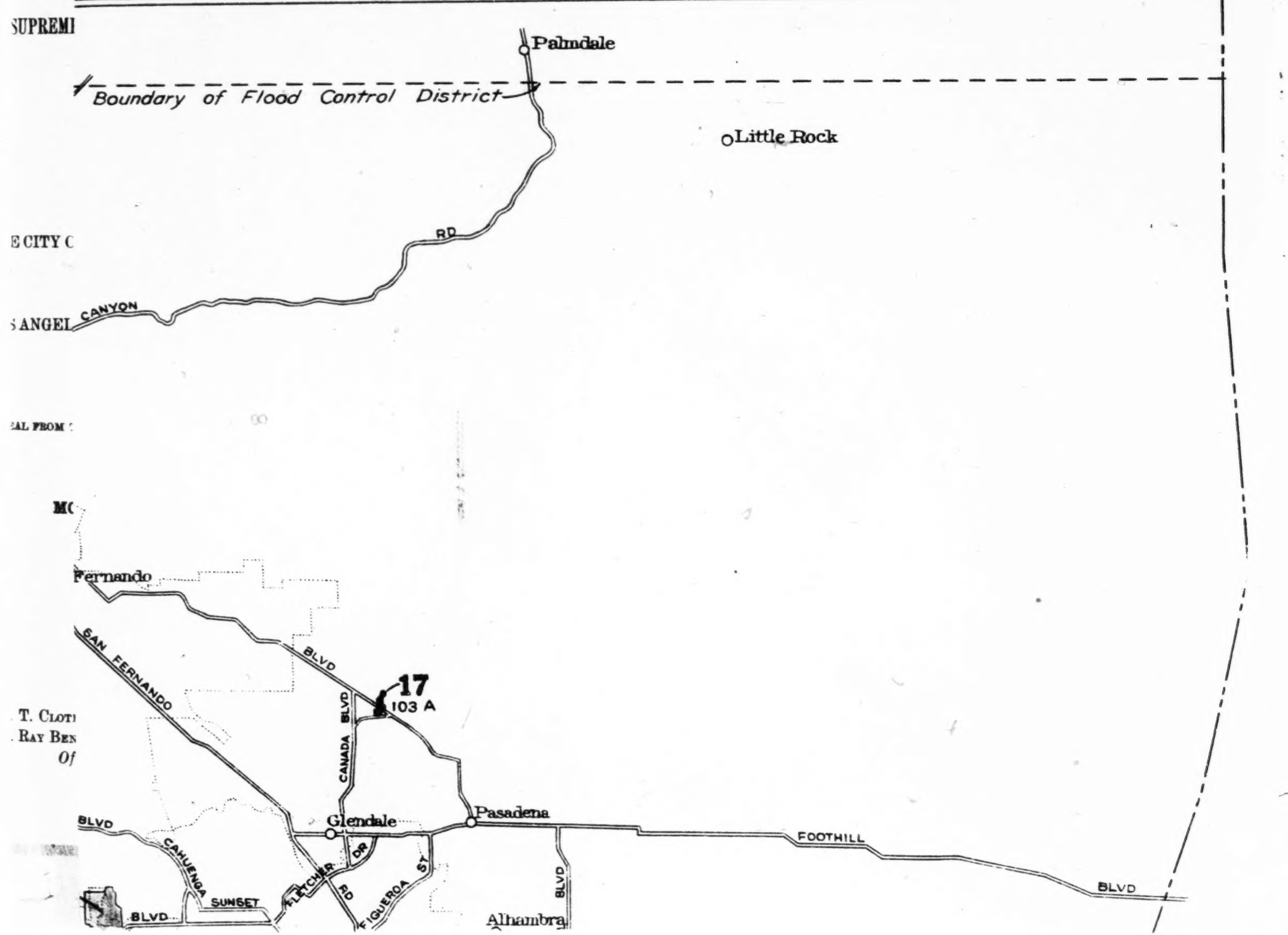
BUREAU OF ENGINEERING
MAPS AND RESEARCH DIVISION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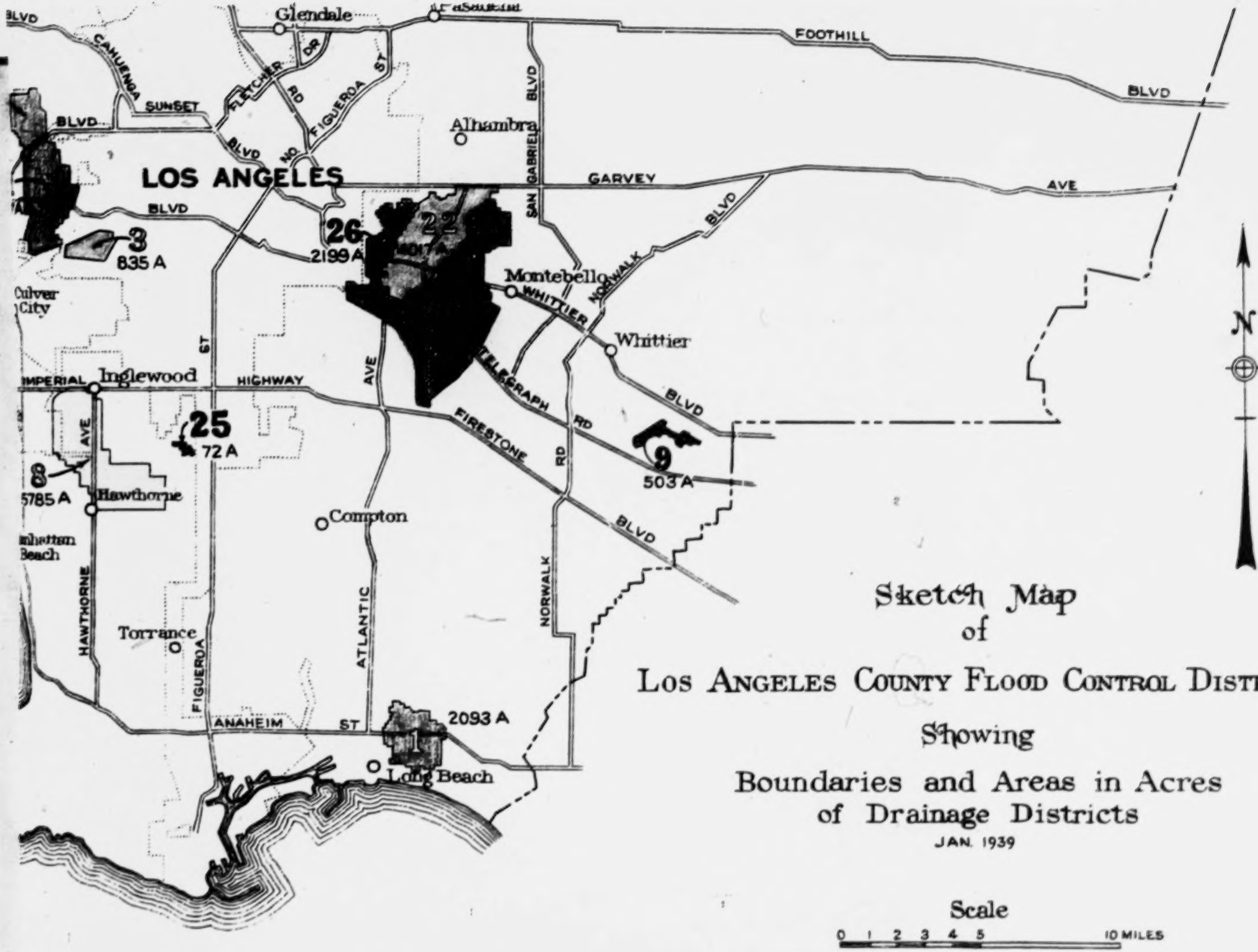
BLVD
FLETCHER
RD
DR
IGUEROA
ST
BLVD
Alhambra
FOOTHILL
BLVD


Glendale
Pasadena
FOOTHILL BLVD
CAHUENGA BLVD
SUNSET BLVD
FLETCHER DR
FIGUEROA ST
Alhambra
SAN GABRIEL BLVD
LOS ANGELES
GARVEY AVE
BLVD
26
2199 A
22
3
835 A
Culver City
Montebello
WHITTIER BLVD
NORWALK BLVD
Whittier
ST
AVE
TELEGRAPH RD
IMPERIAL HIGHWAY
Inglewood
25
72 A
FIRESTONE RD
9
503 A
8
5785 A
Hawthorne
Compton
BLVD
Manhattan Beach
HAWTHORNE
Torrance
FIGUEROA
ATLANTIC
NORWALK
ANAHEIM ST
2093 A
Long Beach
N
Sketch Map
of
LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
Showing
Boundaries and Areas in Acres
of Drainage Districts
JAN. 1939
Scale
0 1 2 3 4 5 10 MILES
Note: Limits of City of Los Angeles indicated by dotted line
A N

p. 4

SUPREME COURT OF THE UNITED STATES.

No. 368.—October Term, 1939.

Ray L. Chesebro, Appellant,
vs.
Los Angeles County Flood Control District, et al.

Appeal from the Supreme Court of the State of California.

[March 27, 1939.]

Mr. Justice Butler delivered the opinion of the Court.

Appellant maintains that a California statute authorizing an administrative board to levy special assessments on his land within a flood control district created by the legislature to pay cost of local improvements and facilities and of their operation, maintenance, and betterment, without providing him an opportunity to be heard on the question of benefits, is repugnant to the due process clause of the Fourteenth Amendment.

Chapter 755, Statutes 1915, creates the Los Angeles flood control district. Section 2 declares that the purposes of the act are to provide for the control of the flood and storm waters of the district, to conserve them for beneficial uses, and to protect the property within the district from damage by flood or storm waters. Section 16 empowers the board of supervisors of the district to construct all improvements and to acquire all property that is necessary or useful for carrying out the purposes of the act.

Chapter 642, Statutes 1937, added § 13½ to the flood control act. It provides: The board of supervisors of the district may accept on its behalf, a transfer and conveyance of "all, but not less than all," storm drain improvements, drainage improvements or drainage systems of defined classes lying within the district. Upon conveyance to the district of any such drainage works it shall become liable for principal and interest of bonds thereafter maturing which were issued by any drainage district to pay the cost of constructing the transferred property. For that purpose the board shall levy a special tax each year upon the taxable real estate in the district.

A map, that with appellant's consent is included in appellees' brief, shows that the flood control district is within and nearly as large as Los Angeles county which contains almost 4,000 square miles and that within it there are eleven drainage districts, two of which were organized under Chapter 258, Statutes 1903, and amendatory acts, and nine of which were organized under Chapter 354, Statutes 1919, and amendatory acts.*

Appellant and the city of Los Angeles presented to the highest court of the State their petition for a peremptory writ of mandate. In substance it alleges: Petitioners own taxable real property within the flood control district and outside the drainage districts. December 1, 1937, the board of supervisors of the district accepted a transfer to the district of the improvements and systems of the eleven drainage districts. The board intends to levy annual special assessments against all real estate in that district sufficient to meet the outstanding obligations incurred on account of the works so transferred. The levy of these assessments will be illegal in that they will be levied against property situated in the flood control district to pay the debts and obligations of other special assessment districts without regard to the accrual of benefits to the lands assessed and will deprive petitioners of their property without due process of law in violation of the Fourteenth Amendment. The petition prays a peremptory writ of mandate to require appellees to levy assessments in accordance with Chapter 755, Statutes 1915, as it was prior to the addition of § 13½ and to command them to refrain from levying any assessment under that section.

Appellees demurred on the ground that the petition failed to state facts sufficient to constitute a cause of action. The state court sustained that contention and denied the writ. It ruled: A finding by the legislature that lands within the flood control district would be benefited by that district's acquisition of the works of the drainage districts is conclusive unless shown to be without reasonable foundation. It must be presumed that, by designating in § 13½ the improvements authorized to be transferred, the legislature found that the entire flood control district would be specially benefited by the acquisition. The particularity of the description implies such

*The two districts organized under the act of 1903 and amendatory acts are No. 1, containing 2093 acres, and No. 3, containing 835 acres. The numbers and areas of the nine organized under the act of 1919 and amendatory acts are as follows: 8,—5785 acres; 9,—503 acres; 11,—3067 acres; 17,—103 acres; 22,—4017 acres; 23,—8786 acres; 25,—72 acres; 26,—2199 acres; 29,—1261 acres.

a finding. The finding thus implied is as fully effective as if declared in express terms in the act itself.

Petitioners appealed to this court; appellees moved, as to the city, to dismiss or affirm on the ground that no federal question was involved; and, as to both appellants, on the grounds that no substantial federal question was presented, and that the decision below rests upon adequate non-federal grounds. We dismissed the city's appeal for want of a substantial federal question and postponed to the hearing on the merits further consideration of the question of jurisdiction and of the motion to dismiss or affirm. 305 U. S. —.

That motion is denied. The validity of the statute under the federal constitution was by the petition appropriately drawn in question and in substance the decision of the state supreme court is in favor of its validity. See *Bryant* v. *Zimmerman*, 278 U. S. 67-69. Its judgment does not depend upon characterization of the statute or mere interpretation of the language employed. Its decision is to the effect that the legislature found that the real property within the flood control district would be specially benefited by the acquisition of the district drainage works and that therefore the appellant and other owners are not entitled to be heard on the question of benefits. Appellant contends there is no foundation for the ruling that the legislature made that determination and that, as put in operation and effect by the State, § 13½ deprives him of his constitutional right to be heard. See *St. Louis S. W. Ry.* v. *Arkansas*, 235 U. S. 350, 362. *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 237. *Railroad Commission* v. *Eastern Texas R. R.*, 264 U. S. 79, 86. *Mason Co.* v. *Tax Comm'n*, 302 U. S. 186, 206-207. We are unable to say that the question is foreclosed by our decisions or that it is so clearly not debatable as to require dismissal for lack of substance. *Hamilton* v. *Regents*, 293 U. S. 245, 258. *Alton Railroad Co.* v. *Illinois Commerce Commission*, — U. S. —, decided January 16, 1939. Nor do we find any merit in the contention that the judgment rests upon an independent non-federal ground.

But we are opinion that the judgment is right and must be affirmed.

In the absence of flagrant abuse or purely arbitrary action, the State, consistently with the federal constitution, may establish local districts to include real property that it finds will be specially benefited by drainage, flood control, or other improvements therein, and, to acquire, construct, maintain and operate the same, may impose special tax burdens upon the lands benefited. *Hagar* v.

Reclamation District, 111 U. S. 701, 704-705. *Spencer* v. *Merchant*, 125 U. S. 345, 355. *French* v. *Barber Asphalt Paving Co.*, 181 U. S. 324, 342. And see *Houck* v. *Little River District*, 239 U. S. 254, 262. And where, within the scope of its power, the legislature itself has found that the lands included in the district will be specially benefited by the improvements, prior appropriate and adequate inquiry is presumed, and the finding is conclusive. *Parsons* v. *District of Columbia*, 170 U. S. 45, 52. *Wagner* v. *Baltimore*, 239 U. S. 207, 218. *Withnell* v. *Ruecking Const. Co.*, 249 U. S. 63, 69. *Hancock* v. *City of Muskogee*, 250 U. S. 454, 458. *Branson* v. *Bush*, 251 U. S. 182, 189-190. *Valley Farms Company* v. *Westchester*, 261 U. S. 155, 162 *et seq.* *Milheim* v. *Moffat Tunnel Dist.*, 262 U. S. 710, 721. But where the district was not directly created by the legislature and there has been no determination by it that their property will be benefited by the local improvements the owners are entitled, under the due process clause of the Fourteenth Amendment, to be heard by some officer or tribunal empowered by the State to hear them and to consider and decide whether their lands will be specially benefited. *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 167. *Embree* v. *Kansas City Road Dist.*, 240 U. S. 242, 247. *Browning* v. *Hooper*, 269 U. S. 396, 405, 406.

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The legislature need not adopt any form of statement or finding for, in the enforcement of restraints imposed by the federal constitution upon the power of States to assess and collect taxes, this Court regards the substance of their enactments as controlling rather than mere forms of expression employed. *Londoner* v. *Denver*, 210 U. S. 373, 385. Appellant does not suggest that as a matter of fact his land is not by the drainage works specially benefited or that a finding that it is so benefited would be without foundation or arbitrary. Indeed, he concedes that, if the legislature either by designating the territory to comprise the district or by expressly so declaring has made the finding, he is bound by it.

As shown by the opinion below, the state court long before the addition of § 13½, held that the mere passage of the flood control act, which did not contain a direct statement to that effect, "must be taken to import a finding by the legislature that the proposed work will answer a public purpose and that its execution will benefit the land within the district to such an extent as to warrant the imposition upon such land of the cost in the manner provided. The

findings thus implied are as fully effective as if declared in express terms in the act itself." *Los Angeles Flood Control District* v. *Hamilton*, 177 Cal. 119, 124-125. The court deemed that language applicable in disposing of appellant's contentions in this case. And we think that as the legislature had knowledge of that decision when enacting the challenged provision, it must be given great weight in determining the validity of § 13½.

The flood control district had long been in existence and empowered to acquire property necessary for its purposes. Section 13½ limited the board's authority to acceptance of "all, but not less than all" the drainage works and defined the tax burden to be imposed. The legislation is not to be distinguished from a measure to take effect upon an event unrelated to the creation of the district or the imposition of special assessments.

No question is raised as to the validity of the flood control district or its authority to levy special assessments on lands within it. By the enactment of the challenged section, the legislature unquestionably intended that the use of the drainage works should not be limited to the purposes for which originally they were intended but that they should also be used in connection with other facilities for the purposes of the flood control district. The challenged section was not enacted to create a new assessment district but specially to authorize the one already established to accept, maintain, and use the designated improvements for some of the purposes enumerated in the flood control act. The essential features of the challenged statute necessarily imply special benefits to the lands in question. We think the state court's ruling that impliedly the legislature made the requisite findings is not without adequate foundation. Mere lack of formal or express statement of them is not sufficient to require reversal.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.